

CHARTER COMMISSION
CITY AND COUNTY OF HONOLULU

TUESDAY, MAY 10, 2006
CITY COUNCIL COMMITTEE ROOM
SECOND FLOOR, HONOLULU HALE
2:00 P.M.

MINUTES

Charter Commission Members Present:

Donn M. Takaki
Andrew Chang
Amy Hirano
Jared Kawashima
Darolyn H. Lendio
Jerry Coffee
E. Gordon Grau
Malcolm J. Tom
James Pacopac
Jan Sullivan
Stephen Meder
Jeffrey T. Mikulina – Late 2:10 p.m.

Others Present:

Chuck Narikiyo, Executive Administrator, Charter Commission
Diane Kawauchi, Deputy Corporation Counsel, Department of the Corporation Counsel
Lori K. K. Sunakoda, Deputy Corporation Counsel, Department of Corporation Counsel
Loretta Ho, Secretary, Charter Commission
Nicole Love, Researcher, Charter Commission

1. Call to Order

Chair Donn Takaki called the meeting to order at 2:02 p.m. on May 10, 2006. Chair Takaki went over housekeeping rules and stated that testimony will be limited to three minutes due to the large number of testifiers and must be related to the agenda.

2. Executive Administrator's Report

Executive Administrator Narikiyo gave a brief recap. At the May 2 meeting, the Commission passed 11 proposals for the ballot subject to Committee on Style drafting and legal/agency review. Included in these proposals were several possible "housekeeping" proposals that will be discussed later this meeting.

Following this meeting, the ballot items will be referred to the Committee on Style, which will be drafting the language for the ballot and finalizing the language of the proposals, without changing the intent of the proposals, along with Corporation Counsel. The ballot items will then go through an agency and legal review process, before one final

review and vote planned in August. The absolute deadline to get the final language to the City Clerk's office is September 1. Following that, work will be focused on public education before the election in November. The Committee on Submission and Information will consider and develop a public education campaign. It is looking like a busy and eventful next few months.

Finally, the budget process continues in the City Council; he was waiting to hear when we next need to be available to testify or answer questions on the budget request, and thought it will be sometime in May.

3. Discussion and Action on Amendments to Proposals:

CATEGORY 1: PROPOSALS DEFERRED FROM MAY 2, 2006 MEETING

PROPOSAL 28 - Ethics Commission; Allow the Ethics Commission to impose civil fines.

The following individuals testified:

1. Piilani Kaopuiki, President, League of Women Voters of Honolulu
2. Chuck Tutto, Executive Administrator and Legal Counsel, Ethic Commission

Written testimony:

1. Randy Perreira, Deputy Executive Director, HGEA
2. Charles Djou, Councilmember, Honolulu City Council
3. Piilani Kaopuiki, President, League of Women Voters of Honolulu

Piilani Kaopuiki testified in support. She read her written testimony into the record.

Commissioner Mikulina arrived

Chuck Tutto testified in support. He stated the Commission supports the intent of the proposal but recommended modifying the current amendment language by deleting "and employees", so this would only apply to "officers." He goes on to say no one disputed those civil fines would make city personnel accountable for serious ethics violations as well as deterring misconduct by others. He stated the question for the Charter Commission is who needs to be held accountable, who is not accountable already? He noted collective bargaining unit employees and civil service employees are subject to discipline for ethics breaches by their appointing authority. High-level City officials who are defined as "city officers" in the Charter, are sometimes seen as outside the reach of meaningful consequences of misconduct. He went on to explain that city officers include elected officials, department heads and deputies, along with other high level appointees. Mr. Tutto explained they all have significant discretionary fiscal powers in City government. He went on to say there are two policy reasons to allow the Ethics Commission to impose fines against officials who have significant discretionary or fiscal power and who break the ethics laws. First, with broad power comes the potential to cause serious public harm. Second, political patronage is often a factor in appointing city officers. He went on to say the Mayor appoints those he/she trusts to develop and implement city policies. He noted political patronage has a downside, if left unchecked patronage can be used to excuse appointee misconduct and to influence discipline.

When ethics violations occur at the highest level, some may be inclined to rationalize the misconduct. Mr. Totto stated the Commission has been faced with cases that illustrated this problem and based on a legal opinion by the Corporation Counsel, the Commission twice recommended the Mayor remove a board member for violation of the ethics laws, the recommendations were ignored and the board member stayed on. The Administration felt the ethics law in question was too restrictive and should not be followed. Mr. Totto stated although understandable, the conduct should not be allowed because it takes away government integrity and public trust. He went on to say the need for authority to impose civil fines is most acute for egregious ethics violations by officers because officers are in position with significant discretionary fiscal power and political consideration may influence how discipline would be imposed. He stated this proposal should be given to the voters so that the voters would be able to take an active role in helping maintain and foster the public's trust in government.

Commissioner Lendio asked Mr. Totto to clarify that civil fines would discourage breaches of the ethics laws by the officers if the voters pass the proposal through? Mr. Totto responded yes. She went on to ask if he feels strongly that that type of situation would discourage anyone from violating the ethics law. Mr. Totto responded yes, even if it doesn't discourage someone because they have no disregard to the law it would allow other benefits, it would allow the public to have confidence that there is a mechanism whereby the city officer could be found liable for the issue. Commissioner Lendio asked Mr. Totto if they would be targeting officers for civil laws and not criminal law because there's a disincentive under the criminal law to have violations, or are they going to target both? Mr. Totto responded if they find facts that show a criminal violation, they'll turn that over to HPD and the Prosecutor to handle it as they see fit. At the same time the Commission would take any steps it felt appropriate within its own jurisdiction.

Commissioner Myers asked Mr. Totto for clarification, his original intent for his support in differing this proposal from the last meeting was to exempt employees covered by collective bargaining agreements. He was going to amend the proposal in this fashion because he thought there were employees who were not covered and asked if that was a significant amount of people or should they just delete the word employees? Mr. Totto responded his reason he suggest deleting employees is because if there are employees covered by collective bargaining and employees not covered by collective bargaining and they are treated differently, one subject to a fine and the other not subject to a fine, there maybe constitutional problems. He went on to say they talked to Corporation Counsel regarding this and that "officer" is a term that is defined in the Charter and would pass the rational basis test.

Commissioner Hirano asked Mr. Totto to clarify, an "officer" covers exempt employees? Mr. Totto responded no. It covers some but not all, it covers the high level appointees.

Commissioner Pacopac asked Mr. Totto who does the word "officer" refer to? Mr. Totto responded the definition is in the Charter who is defined as "elected members – the Council, the Mayor, the Prosecuting Attorney as well as the Managing Director, any person who is appointed as Administrative Head of an Agency of the City or as a member of a board or a commission." Also any person appointed by board or commission as the administrative head of such agency, First Deputy or other Deputies or Division Chiefs appointed by the Administrative Head of an Agency, Deputies of the

Corporation Counsel and the Prosecuting Attorneys. The Charter Commission and the Reapportionment Commission are not defined as officers because they have been specifically removed from the Charter as officers.

Chair Takaki asked Corporation Counsel if the Commission uses the word "officer" would that address the concern of double jeopardy. Deputy Corporation Counsel Lori Sunakoda clarified with respect to double jeopardy; she doesn't want to use that in a way that may be confused with differentiating between civil proceedings and criminal proceedings. She stated the obvious concern is when there is someone being disciplined or subject to adverse action or prosecution with a civil and criminal proceeding which she states is clear with respect to double jeopardy as it's used in that context. She went on to say the concern of Corporation Counsel is "officers" does include exempt civil service employees that not subject to collective bargaining and that raises a question or an issue to defining the class to whom they intend to apply the amendment to which would be subject to possible constitutional challenges. Deputy Corporation Counsel Sunakoda stated the other concern is with respect to the current language in Section 11-107 that sets up the Ethics Commission, their responsibility and obligation has the Ethics Commission as an entity attached to the Corporation Counsel for Administrative purposes and arguably part of the City or the Appointing authority. She went on to say there could be an argument made by someone who maybe subject to disciplinary action whether in the form of a suspension by the appointing authority and at the same time there may be an investigation occurring initiated by the Ethics Commission. Deputy Corporation Counsel Sunakoda stated if the Ethics Commission at that time decides to ask that suspension is levied or some other form of discipline is needed against that officer, if the Ethics Commission then decides to institute or impose fines, that action could possibly be challenged. She went on to say there are those types of issues and part of it stems from the way the Ethics Commission as an entity is set up and created as set forth in the existing language in the Charter because they only have advisory authority with respect to recommending possible action to be taken for misconduct or the alleged misconduct of violation of the Ethics Code. Chair Takaki asked Corporation Counsel instead of using the word officers as Mr. Totto offered as an amendment, could the Commission use HGEA written testimony suggestion to include three categories? First was elected officials and Chair Takaki asked Corporation Counsel for their opinion if it included elected officials. Deputy Corporation Counsel Sunakoda responded if it's limited to elected officials, they don't have a problem with that. She clarified in her earlier statement the concern is because of the current language that sets up the advisory authority of the Ethics Commission, the concern is it could be argued based upon that language, the Ethics Commission is part and parcel the same as the appointing authority that metes out the disciplinary action against the officer. Mr. Totto responded that the Commission has assumed all along that employment double discipline is something that the Commission cannot do because it's unlawful for them to do. He commented to say this is a roadblock as what he thinks Corporation Counsel is intimating to focusing on officers. He went on to say they have to follow the Hawaii Administrative Procedure act, which lays out due process and administrative proceedings. Mr. Totto stated they have done research and have found there are cases where civil service employees were disciplined twice for the same misconduct. He went on to say he doesn't think the Ethics Commission would want to condone disciplining someone twice for the same misconduct. Mr. Totto stated they already inform appointing authorities whenever they review or investigate one of their

employees or officers and request that they not take any disciplinary action until the Commission is finished with theirs and they have confirmed with the Commission. He went on to say if this is and really an issue that needs to be handled, this needs to be an ordinance. He stated they understand that they have to follow all the laws applicable and the Commission would comply.

Chair Takaki asked if it would be clearer to say "those officers with no appointing authority?" Mr. Totto responded it may be simpler but doesn't know if it's the right way to go because there's a small risk from any of the issues raised by Corporation Counsel. He went on to say he thinks the Charter Commission should have faith that whichever agency is going to carry something out would do that lawfully in the future and we give up the benefit of having those people subject to possible fines for egregious ethical misconduct who run the city. Mr. Totto stated other states has taken this approach, Wisconsin, California, Texas and Ohio and they limit fines to what they call public officers and they have a long laundry list of who those people are.

Commissioner Chang asked if the Commission were to follow the sentiments and the guidelines of the Corporation Counsel, how would Mr. Totto reword the amendment? Mr. Totto responded that he would take the language out of the Charter, covering members of the Council, the Mayor, and the Prosecuting Attorney. Commissioner Chang then asked if there has been instances in recent times that has raised to Mr. Totto's concern for the need to include the other 300 or so people? Mr. Totto responded two he had mentioned when the Mayor decided to adopt the recommendation of the Commission and allow the particular Commission member to stay on board even though it violated Corporation Counsel's opinion, it violated the Ethics Commission's opinion. He commented they have the same facts the second time around, he feels that's when it would be appropriate to have a fine. He went on to say if the Mayor wants to put that Commission member in that predicament, that's up to the Mayor but the Mayor and the Commission member to say they don't care. Commissioner Chang commented that's an arguable question.

Commissioner Kawashima asked Corporation Counsel if they could address Mr. Totto's statement he just made as Commissioner Kawashima understood it, is there are various scenarios that could occur in which someone could raise different legal arguments. Commissioner Kawashima asked if they would agree or disagree that there are other avenues such as ordinance or otherwise to address these potential problems if the Commission passes the proposal with the current language? Deputy Corporation Counsel Sunakoda replied with regard to ordinance, the ordinance needs to be consistent with the Charter language. She stated when they reviewed Section 11-107 the concern they have in particular is the language that says "the Commission shall recommend the appropriate disciplinary action against officers and employees found to have violated the standards of conduct." The area they are concerned about is theoretically for example a situation which a recommendation has been made for some type of action and subsequent to that the Commission makes a determination that fines are appropriate and in addition or on top of the additional recommendation to the appointing authority to be carried out. Deputy Corporation Counsel clarified because the language in the Charter as it reads now with respect to the establishment of the Commission specifically states that the Ethics Commission is administratively attached to the Department of Corporation Counsel and the Commission is limited in its authority

capacity with respect to making recommendations to discipline for misconduct to the appointing authority. She went on to say when the appointing authority then takes action on that recommendation per se suspension and then subsequently pursuant to what its proposing in its amendment initiates and attempts to levy fines against the individual for the same misconduct, their concern they have is an argument could be made or there could be a legal challenge brought by that officer basically alleging double jeopardy. Deputy Corporation Counsel Sunakoda commented she thinks the argument is the same that it is inherently unfair, they are being disciplined for the same misconduct and they are disciplined by the same authority because arguably there's an argument to be made because the Ethics Commission is not really independent based upon the language of the Charter and how it's set up.

Commissioner Sullivan asked Corporation Counsel as a follow-up to Commissioner Kawashima's question. She stated she assumes if the Charter amendment with the officer language were to be adopted, the Ethics Commission would have to adopt Administrative Rules on how to implement the fine system. She asked Corporation Counsel in adopting the rules, could it address the particular issue to prevent the situation from occurring? Deputy Corporation Counsel Kawauchi clarified earlier discussion with respect to the Corporation Counsel's position on this matter. She stated to answer Commissioner Sullivan specific question, yes the Ethics Commission or by Ordinance, however it needs to be enacted could set up the procedures and the circumstances under which the fine would be issued. She clarified Corporation Counsel's position in this matter, although they researched the issue they did not find any cases that were definitively on point. So they cannot tell the Charter Commission if they proceed with the definition of officer as defined in the Charter that it would be found to have violated the constitutional rights or legal rights of the person defined as an officer under the Charter definition but it would be a matter of less risk. She went on to say it would be less risk that the city would be sued or found to be at fault if the Charter Commission elected to use the civil fines only against elected officers and there would only be a greater risk from that definition of those subject to civil fines if they expanded the class to be officers. Deputy Corporation Counsel explained they can't tell the Charter Commission what the situation would be but if they expand the class to the officer definition there's a more likelihood to be engaged in litigation. She went on to say the way they interpret the Charter is very broadly. She stated if the Charter Commission decides now that they want to include officers as that class that would be subject to civil fines, Corporation Counsel would take the position until they get a definitive ruling about whether a fine could be meted out against a person, they would advise the Ethics Commission that the Charter allows them to do this. She went on to say the Ethics Commission can propose an ordinance that would be narrow in scope but it would be a smaller class than what the charter allows. She stated she doesn't know what the Ethics Commission would say in response to that.

Mr. Tutto asked to respond. He stated the amendment contemplates an ordinance because it says, "Fines as established by ordinance". He went on to say they would look at things, the maximum amount of the fine needs to be established by ordinance. He stated an ordinance also has to define what are the factors involved that would lead to a conclusion of serious misconduct. Mr. Tutto commented he doesn't think the Ethics Commission would have the power to fine unless that ordinance was in place and an Appeals Agency also has to be set-up before they could fine. He went on to say he

thinks the ordinance is where the rubber would meet the road and these particular issues, if they are that consequential and doesn't feel that double jeopardy is that consequential but if there other issues they could be handled at that time because they would be putting everything in the charter that was supposed to be handled by the ordinance.

Commissioner Kawashima commented that was his question to Corporation Counsel, Charter versus ordinance. Commissioner Kawashima asked Corporation Counsel for their comments regarding if Mr. Totto's statement addressed some of their concerns with the assumption if the Charter reads as the proposal reads. Deputy Corporation Counsel Kawauchi responded the ordinance could be as broad as the charter language. Commissioner Kawashima then asked assuming as Mr. Totto states the ordinance could also be more limited in scope. If the ordinance were more limited in scope would it address some of the concerns they are raising at the meeting today? Deputy Corporation Counsel Kawauchi responded it may be more narrow in scope, but the question for the Corporation Counsel as attorneys for the Ethics Commission would be why would they narrow the scope of the Charter unless they've got a direct court ruling on that issue. She went on to say if this Charter Commission intended that that entire class of individuals defined as officers would be subject to the civil fines, then why isn't it being imposed on them.

Commissioner Tom commented to Mr. Totto that he was confused on his current position regarding the amendment he is proposing today. Commissioner Tom then asked Mr. Totto how long he has been the Executive Director of the Ethics Commission, Mr. Totto responded 6 years. Commissioner Tom then asked Mr. Totto in the period of 6 years how many times has the Ethics Commission taken an action as a result to double discipline to an employee? Mr. Totto responded once. He clarified they were aware that the issue may arise so when making their recommendations they asked the appointing authority to check on this issue with Corporation Counsel and get back to them. Corporation Counsel responded it was a matter of double discipline and the recommended discipline of the Commission could not be imposed because the appointing authority already had administered discipline. Commissioner Tom then asked Mr. Totto couldn't they follow that same procedure? Mr. Totto responded yes. Mr. Totto stated after that incident they decided to put in writing a notification to the appointing authority that they are investigating an employee, there's been no conclusion, to keep it confidential and before they take any disciplinary action to check with the Ethics Commission. Commissioner Tom then clarified that's why Mr. Totto is saying the Ethics Commission is forbidden from doing any double discipline action. Mr. Totto replied in the affirmative. Commissioner Tom then asked Mr. Totto why he was proposing his amendment? Mr. Totto responded it doesn't have to do with double discipline and they don't want to do double discipline. He went on to say they want to do discipline which may not occur. Commissioner Tom stated Mr. Totto's amendment is proposing to exempt about 10,000 plus people from any jurisdiction under the Ethics Commission. Mr. Totto replied the Commission would still be able to make recommendations as to discipline. He went on to say if they look at collective bargaining employee or a civil service employee, if the Commission were to recommend a suspension that could act as a fine, if adopted. Mr. Totto stated their concern they had with having everyone under this umbrella of civil fines were those raised by HGEA which had to do with the grievance process under the Civil Service Commission or through

arbitration. They could grieve the fine imposed by the Ethics Commission and they could come out with very different and inconsistent opinions based on those fines or what is allowed.

ACTION:

First Motion:

Commissioner Myers moved to amend Proposal 28 to delete reference to employees and only include officers in this proposal, Commissioner Grau seconded that motion. No discussion followed.

AYES: TAKAKI, COFFEE, GRAU, KAWASHIMA, LENDIO, MEDER, MYERS - 7
NOES: CHANG, HIRANO, MIKULINA, PACOPAC, SULLIVAN, TOM – 6

MOTION TO AMEND PASSED.

Second Motion:

Commissioner Lendio moved to approve the amended Proposal 28, Commissioner Myers seconded that motion. Discussion followed.

Commissioner Lendio stated she would be voting against this proposal being on the ballot. She went on to say she does not see the deterrent effect and is not convinced as to civil fines meted out by the Ethics Commission. The Ethics Commission can continue to recommend discipline under their current rules and governing scheme.

Commissioner Coffee commented there's more than a deterrent effect involved, there's an issue of justice and accountability and thinks that should be taken into consideration as well.

Commissioner Sullivan asked to make a motion to move to amend the amended motion.

Third Motion:

Commissioner Sullivan moved to change the word "officers" to "elected officials". Seconded by Commissioner Tom. Discussion followed.

Commissioner Sullivan explained she is proposing this change to narrow the scope given the discussion that has just occurred and maybe that would alleviate some of the concerns discussed.

Commissioner Myers stated he would be voting against the amendment because he feels it would narrow the group of people and would like to keep the proposal with the original amendment.

Commissioner Mikulina stated he would also be voting against the proposed amendment.

Chair Takaki stated he would be voting in favor.

Commissioner Kawashima stated he would be voting in favor. He commented he hears what Mr. Totto is saying and he thinks as a practical matter he's correct and thinks these issue won't probably come up, as often and there are other ways to address it. Commissioner Kawashima stated he would feel uncomfortable putting something into the charter that is overbroad and not drafted he thinks to a level that he feels comfortable based on what Corporation Counsel is saying.

AYES: TAKAKI, CHANG, KAWASHIMA, LENDIO, PACOPAC, SULLIVAN, TOM
- 7
NOES: COFFEE, GRAU, HIRANO, MEDER, MIKULINA, MYERS - 6

THIRD MOTION TO AMEND THE AMENDMENT PASSED.

Commissioner Lendio withdrew her previous motion.

Fourth motion:

Commissioner Lendio moved to approve the second amended version, which includes only elected officials. Commissioner Chang seconded that motion. No discussion followed.

AYES: TAKAKI, CHANG, COFFEE, GRAU, KAWASHIMA, MEDER, MIKULINA,
MYERS, SULLIVAN - 9
NOES: HIRANO, LENDIO, PACOPAC, TOM - 4

Nikki's notes have:

AYES: TAKAKI, COFFEE, GRAU, KAWASHIMA, LENDIO, MEDER, MIKULINA,
MYERS, SULLIVAN - 9
NOES: HIRANO, PACOPAC, TOM - 3

FOURTH MOTION PASSED.

CATEGORY 2: DEPARTMENTS AND PERSONNEL

PROPOSAL 27 - Liquor Commission and Civil Service; Exempt Liquor Control Administrator and Deputy Administrator from civil service.

The following individuals testified:

1. Dewey Kim Jr., Administrator, Honolulu Liquor Commission
2. Dennis Enomoto, Chairman, Honolulu Liquor Commission

Written testimony:

1. Barbara Marshall, Councilmember, Honolulu City Council

2. Charles Djou, Councilmember, Honolulu City Council
3. Dewey Kim, Jr. Administrator, Honolulu Liquor Commission

Dewey Kim read his written testimony into the record. He also noted the Commission is in favor of making the position exempt and understands in the other counties the position is exempt. Commissioner Chang stated he always had some discomfort with the proposal because in a way the civil service set up was designed in a way to immunize individuals from political influence because they got the protection. He went on to say he doesn't know if making the position exempt from civil service accomplishes what the proposed amendment is suppose to accomplish. He commented that by making the position exempt, that person could be more vulnerable to political pressures in the job because they are subjected to the appointment without any protection of the civil service. Mr. Kim responded he sees that that could be a problem in his daily operation either way, either that if they are civil service it would be too difficult to remove them, on the other hand if they are not doing a good job it might be easier if they were exempt. Commissioner Chang clarified the solution should be through the amendment to the State Statutes. Mr. Kim responded he thinks that would be a lot easier.

Commissioner Hirano asked Mr. Kim wasn't this amendment proposed because of the past occurrences under the Liquor Commission? Mr. Kim responded he thinks so. Commissioner Hirano then asked if the other counties all have exempted positions, they are also under the HRS? Mr. Kim replied they are under the same problem and thinks it would be cleaner to clean up the State law and make it so the position could be exempt. Commissioner Hirano stated that could be done retroactively next session in the event this proposal passes and is put on the Charter. Mr. Kim responded that could be a possibility also. Commissioner Hirano asked why didn't the Honolulu Liquor Commission go before the last legislative session to fix the issue? Mr. Kim responded he couldn't speak for the Commission but commented they were involved in the strategic plan and answering a lot of questions and thinks they were extremely busy. He went on to say now they have time they are going back and reorganizing the unit and make it more responsible and thinks that's why this proposal has come up at this time.

Dennis Enomoto testified on behalf of the Liquor Commission who supports the proposal. He commented having gone through removing an administrator and hiring a new administrator, he feels it is important to have an exempt position. He noted the former Administrator was cooperative in leaving the office but it was still a very difficult situation. Mr. Enomoto commented to answer Commissioner Hirano's earlier question to Mr. Kim. He stated the Commission is voluntary and only have about 20 hours per week to allocate this type of work and they are putting in more than 20 hour per week working on the strategic plan and hiring a new administrator. He stated it takes 3-5 hours a week to handle the licensing and adjudications because they meet every Thursday and they are also tasked in overseeing the Administrator and unless they can have the ability to have some power such as the proposal would provide, it's difficult to maintain a good operation. Mr. Enomoto stated he thinks this charter amendment would apply if there's a problem and that is what they are trying to fix. Commissioner Hirano asked Mr. Enomoto if they Commission puts the proposal on the ballot for the voters to decide, would he be willing to go to the Legislature to alter the HRS? Mr. Enomoto responded yes.

Commissioner Lendio asked Mr. Enomoto would they still go to the Legislature to try to change the law even if the Commission doesn't put the proposed charter amendment on the ballot? She clarified she as a lawyer has a reluctance to put something before the voters that is going to be unconstitutional on its face and would rather have the Legislature change the law next year and then in 2008 the Council can put this charter amendment on the 2008 ballot. Mr. Enomoto responded he would like to get an opinion from the Corporation Counsel.

Chair Takaki asked the Corporation Counsel to comment on Commissioner Lendio's question to Mr. Enomoto. Deputy Corporation Counsel Kawauchi responded they reviewed the proposal when it first was before the Charter Commission and determined it would be appropriate to amend the charter to include the exemption if that was the desire of the Charter Commission. She went on to say with the amendment of the Hawaii Revised Statute in 2000 with Civil Service reform, there is language they would argue allows Honolulu to continue to have its civil service laws within the charter. She stated for the Charter Commission's edification, the neighbor island Liquor Control Administrator is an exempt position because those neighbor island counties have elevated their agency to a department, so the Department Head holds an exempt position and that would be true in Honolulu too. She stated Civil Service allows all Department Heads to be exempt, but in Honolulu the Liquor Commission is administratively attached to Department of Budget and Fiscal Services and for as long as that happens it would be a civil service position.

Chair Takaki clarified right now the Liquor Administrator is appointed by the Liquor Commission. Mr. Enomoto responded yes. Chair Takaki then asked Mr. Enomoto if the were to exempt the position from civil service does he perceive the Liquor Commission as the appointing authority for the Liquor Administrator? Mr. Enomoto responded the current Administrator still has 5 months on his probationary period. He went on to see he doesn't foresee with the work that he has done and the ability he has, he doesn't see any problem with this particular Administrator or the Assistant Administrator. Mr. Enomoto clarified this proposal was brought up because of an audit recommendation.

ACTION:

Commissioner Lendio moved to approve Proposal 27, Commissioner Grau seconded that motion. No Discussion followed.

AYES: COFFEE, GRAU, HIRANO, KAWASHIMA, MEDER, MIKULINA, MYERS,
SULLIVAN, TOM - 9

NOES: TAKAKI, CHANG, LENDIO, PACOPAC – 4

MOTION PASSED

**** PROPOSAL 33** - Department of Emergency Services; Revise the Powers, Duties and Functions of the Director and the Department.

The following individuals testified:

1. Jim Howe, Operations Chief, Ocean Safety and Lifeguard Division

2. Chief Patricia Dukes, Chief, Honolulu Emergency Services Department
3. Dr. Elizabeth Char, Director, Honolulu Emergency Services Department
4. Chief Alvin Tomita, Deputy Fire Chief, Honolulu Fire Department

Written testimony:

1. Dr. Elizabeth Char, Director, Honolulu Emergency Services Department
2. Dr. Jan Prins, President, Hawaiian Lifeguard Association
3. Jim Howe, Operations Chief, Ocean Safety and Lifeguard Division

Jim Howe testified in support of Proposal 33. He stated this particular proposal is a lifesaving proposal, which is what they do in their business. The men and women he is representing today are the ones that save people in the ocean daily 365 days a year. He provided the Commission with numbers; about 17 million people come to our city beach parks last year, they had about 1,400 rescues, about 100,000 preventive actions and this particular proposal they feel very strongly would lead to saving lives. He commented he knows there may be some legal concerns and stated he's not an attorney but is a lifeguard and have been on the front line for many years and feels this proposal is very important to the people that do that work. Mr. Howe stated time is of the essence and when responding to a situation in the ocean, they have 4-6 minutes to get to that person, get them up and out and revived. If they don't get there within the 4-6 minutes, it's done. Chair Takaki asked Mr. Howe if the proposal would affect any of the funding they would receive by having the Charter specifically states that EMS is responsible for the Ocean and near shore waters and beach rescues? Mr. Howe deferred to Dr. Char to respond to Chair Takaki. Commissioner Coffee asked Mr. Howe if he could give specific examples how because the Charter doesn't include the language they are proposing as he advocated has actually resulted in a loss of life. Mr. Howe responded he would not like to go a specific case but commented that when calls come in from the public through 911 they go to the Fire Department and the Fire Department dispatches a Fire Truck from Fire Station that's inland, he noted they do have some coastal stations. HFD may or may not call the Ocean Safety Division, they don't have too and the way the Charter currently states it's the HFD's mission. Commissioner Coffee clarified as an alternative that particular fire unit that receives the 911 call would be the respondent? Mr. Howe responded yes and they would not respond at all although they were closer, had better equipment and could get there faster. He clarified he is not suggesting to take the Fire Department's very important role out of the scenario because it's a team effort. Commissioner Coffee asked Mr. Howe how would this proposal change resulting the Ocean Safety Division be put into the loop, would it change the title? Mr. Howe responded it would allow the Fire Department to turn over cases to the Ocean Safety Division legally. He clarified right now in the charter it says they are the agency for the city that does rescues on the sea, they have to respond because it's their responsibility. Mr. Howe went on to say they are looking for the shared responsibility where they could turn case over to them, they could respond and would still want HFD to support them. He stated if they could handle the case, get there quicker and get it done, they can call HFD back and let them know they have it under control and HFD could turn back to their station and feels it's a preferential situation when it comes to these types of emergencies. Commissioner Coffee asked Mr. Howe if he knows of any resistance from the Fire Department? Mr. Howe responded no.

Chief Patricia Dukes testified in support. She stated they are past being ambulance drivers and are now medical providers and recognized as pre-hospital medical providers to the community mostly in Hawaii, Statewide and Nationwide. She went on to say the language as it is currently in the Charter would be amended to showcase EMS as being the premier medical responder of the City and County, which there is no clear medical component of the City and County. The current language says they would respond or react to Emergency Medical Services and stated they have gone past that and they are now into injury prevention. Chief Dukes stated they are medical authorities and would like to be recognized as such in their duties and functions of the department.

Commissioner Tom asked Chief Dukes if she had a chance to see Proposal 36? Chief Dukes responded yes she has and she stated they favor the HFD does help EMS as emergency medical service responders. Chief Dukes clarified they are the first response and they are the advance life support response. She went on to say in conjunction with Proposal 36, that is why EMS is asking to be recognized as the medical authority and it has to do with funding also. Commissioner Tom then clarified that Chief Dukes does not see any contradiction to the word "medical Services should be provided or complimentary?" Chief Dukes responded yes, it's more clearly defined on what they do. They do injury prevention and pre-hospital care.

Chair Takaki asked Corporation Counsel for clarification if they see any concerns with having the Charter amended to have the Ocean Emergency arising on the beach or near shore waters in this section of the Charter for EMS as well as having it remain under the HFD section as Proposal 36 indicates? Deputy Corporation Counsel Spurlin responded their office has some concerns because the way the Charter was drafted, the prior Commissions wanted to make clear that each of the agencies there was a definite delineation of duties and functions. Deputy Corporation Counsel Spurlin stated when she reviewed Proposal 33 and 36, on its face both agencies seem to be providing the same service. She stated one way to remedy the potential conflict would be to say "in conjunction with Emergency Services" for proposal 36. Chair Takaki asked if they could also use the words "in conjunction with" in Proposal 33? Deputy Corporation Counsel Spurlin responded one agency has to be the primary. Commissioner Lendio asked why? Deputy Corporation Counsel Spurlin commented it's not illegal but it would clarify who is primarily responsible for the function. Commissioner Lendio asked who would that be important to and who would sue under that scenario? Deputy Corporation Counsel Spurlin responded for City Administration purposes and a conflict of implementation. Commissioner Lendio commented it would give leeway for both to have depending on what the administration decides at that specific time. Deputy Corporation Counsel Spurlin responded no. Deputy Corporation Counsel Spurlin stated she understands that during the day Ocean Safety does the life saving and HFD does the body retrieval and they work on the weekends. Commissioner Lendio stated it gives them greater options and greater leeway to figure out administratively how they are going to do the rescues on the ocean. Commissioner Lendio asked Deputy Corporation Counsel Spurlin if that was an accurate statement? Deputy Corporation Counsel Spurlin responded it is but stated she would be more comfortable if it was revised to say "in conjunction with". Commissioner Lendio commented what Deputy Corporation Counsel Spurlin is saying is the time conflict would arise if the two agencies were conflicted against each other. Deputy Corporation Counsel commented there would be clearly an issue of who is responsible. Commissioner Lendio stated legally it's okay.

Commissioner Myers asked if this proposal would change where the initial 911 call goes? Dr. Char responded it may in the future, right now she doesn't think it would but projecting department powers, duties and functions down they line it may. Commissioner Myers then asked it should not be a detriment to the public? Dr. Char responded she would hope not.

Commissioner Mikulina commented if it were in two places in the charter, under this change would only EMS respond? He stated there may be a litigation concern if a someone was to lose a relative or friend and only EMS responded when both agencies has the responsibilities and HFD failed because they worked out an agreement where one agency is the primary responder and the other agency is secondary.

Dr. Char responded she could clarify. She stated the two divisions are EMS and Ocean Safety and they work together with the Fire Department cooperatively, recognizing the resources are scarce and are trying to cooperate and share resources so they could create a better system for the end user and the Administration. She went on to say, the question is why should this proposal be on the ballot. She stated this is the venue, this is where the duties, powers and functions were created for the department when it was created in 1998. Secondly, it would affect the department in terms of establishing when there are co-responses that EMS is the primary medical response. She clarified the HFD backs them up and they do respond and they are learning medical response as well. Dr. Char stated the level of care that is being provided is completely different. She went on to say they do basic life support; EMS staff is intravenous people, following doctor's orders. EMS staff takes them 2 years, they are certified, National registry, they start IV's, they're pushing medication, and they are doing cardiac defibrillation. She commented the levels of care are extremely different and they are the only pre-hospital medical entity. Dr. Char stated this proposal would also affect their department in terms of funding. She stated they would be competing for State monies that are out there to support EMS in terms of State funding and grants, federal grants, homeland security. She went on to say if they can show them the Charter with the updated powers duties and functions and the things they are doing, it would help them when they try to secure funds and grant monies. Dr. Char stated the Fire Department's proposal is cooperative in some respect and is trying to add in a more accurate portrayal of what they do as well and they are adding in they are doing emergency medical response. She stated if their proposal moves forward, she thinks the EMS proposal moves forward to show they are not doing the same thing and they are tremendously different level of care being provided and she thinks they are tapped as being the primary providers both for Emergency Medical Pre-Hospital Response and Ocean Safety.

Commissioner Tom asked for clarification of any possible confusion between Proposals 33 and 36. Commissioner Tom asked if it would be accurate to portray for emergency medical services, EMS should be the primary responder? Dr. Char responded yes. Commissioner Tom then asked for ocean incidents who would be the primary responder? Dr. Char responded it would depend because currently that is Ocean Safety's primary task, but if something was to happen at 8 p.m. Ocean Safety is no longer there and in that case Fire Department would become the primary call for that rescue. Commissioner Tom asked if it were distinction that Ocean Safety takes would be primarily responsible for Beach and near shore water versus Fire Department, which tends to be more ocean going. Dr. Char responded she doesn't know at what point

would be the delineation of Coast Guard versus the Fire Department but for Ocean Safety would be the near shore waters. Commissioner Tom asked if Ocean Safety would be the primary responder for near shore waters? Dr. Char responded for the most part they are because that's their primary task is. Commissioner Tom asked would HFD be the primary responder for sea rescues? Dr. Char responded she would need Chief Tomita to clarify.

Commissioner Hirano commented what she finds confusing is as a member of the general public when she finds an emergency at sea and she calls 911, it becomes an internal thing on who becomes the primary responder at that point and time. Dr. Char responded the 911 operators and the operator would ask Police, Fire or Ambulance and then they would take the call and would pass the call to the Fire Department. She stated the system they have worked out right now is the Fire Department is supposed to co-respond with Ocean Safety because usually they are in close proximity. Dr. Char went on to say more often than not, the lifeguards are seeing the event happen and before the 911 call goes in they are there responding and not waiting for the 911 calls. She stated if it comes in, as a 911 call at a beach they are not guarding then that's the mechanism to get help out there and more often than not it would be a co-response.

Commissioner Kawashima asked Dr. Char to elaborate on the possible procedural changes if this proposal is passed. Dr. Char stated she was trying to be farsighted because the Commission meets every 10 years. She went on to say if Ocean Safety was added to the 911 systems that might change where if a call came in, it might get routed directly to Ocean Safety. Currently they are not answering 911 calls; it gets routed to them secondarily. Commissioner Kawashima asked Dr. Char if there were any other changes that could occur or perceive if this proposal goes through. Dr. Char responded the other big thing has to do with funding where if they are the primary entity tasked with that that would help in trying to secure grant funds and other state funds.

Commissioner Sullivan asked Dr. Char on Section 6-603(a) the language being proposed is "Develop programs and provide emergency medical care and serve as the primary pre-hospital medical resource". Commissioner Sullivan commented it says "primary pre-hospital" and it doesn't say "primary emergency medical care" and asked if there was a reason it was written in that language? Commissioner Sullivan stated she has a similar concern because they are being asked to amend the Fire Chief's duties to insert emergency medical and she thinks that is what is confusing the Commissioners. Dr. Char responded the reason they put primary in is because they want to be listed as the primary pre-hospital medical resource in part if the Fire Department is also going to be saying under their Duties, Powers and Functions they are also providing emergency medical care, they want it to be known that they are the primary provider for the City and County. She went on to say the other reason is because emergency medical care is a continuum between the pre-hospital staff and the emergency department staff because that's all the spectrum of emergency care and they are just delineating they are pre-hospital. Commissioner Sullivan then asked Dr. Char if she would support language that said, "provide the primary emergency medical care and serve as the primary pre-hospital medical resource". Dr. Char responded in the affirmative.

Commissioner Coffee asked Dr. Char if the Commission is going to make changes now and anticipate that more changes will be done later as the whole system evolves what

does she feel would be a perfect first responder system considering the benefit to the end user, victims and public in the 911 network? Dr. Char responded the current system is a pretty good system right now. She thinks people are getting care, getting the right responders and are getting it expeditiously. She went on to say she thinks they have a level of cooperation between the Fire Department, Police Department and the Emergency Services Department that hasn't been seen before. Dr. Char stated they have agreements with each other, they have hotlines and feels they are getting a good level of cooperation and the end user is getting good care right now.

Chief Alvin Tomita stated as far as the Fire Department is concerned, they work together as a team with all public agencies. He stated in recent years they have come to a point where they are getting better at what they do. He went on to say the whole purpose of this is to serve the public the best way they can and to get the service there as quickly as they can. Chief Tomita clarified HFD is not claiming to be the primary response for medical services, they do co-respond. He went on to say the Charter Amendment that affects the Fire Department, they were in agreement earlier to the word "co-respond to medical emergency" was supposed to be inserted and he's not sure if that it has been done. Chief Tomita stated the discussion earlier was to insert the word "co-respond" to medical emergencies and clarified they are fine with that because that's what they do. He stated as far as Ocean Rescue, the Lifeguards are there on the beach during the day and HFD co-responds with them also but they are also primary responders in certain situations and have certain equipment they don't have and vice versa. Chief Tomita clarified it depends upon the situation and location and they have to work closely. He stated he agrees Ocean Safety should be primary on certain situations but they should be called simultaneously also because time is of the essence when it comes to rescues. He stated a lot of time they get called because it's a body recovery, which makes it too late at that time.

Commissioner Lendio asked Chief Tomita if they co-respond right now? Chief Tomita responded yes. Commissioner Lendio then asked if the Commission does not include that language they would still co-respond? Chief Tomita responded yes, they just wanted to clarify what they do.

Commissioner Tom asked Chief Tomita on Proposal 36, the changes he is proposing, is that to help secure funding from Homeland Security funds? Is that the purpose? Chief Tomita responded that is not the purpose, they wanted to define and encompass the total job they do.

Commissioner Coffee asked Chief Tomita if he is in favor of the changes to Proposal 33? Chief Tomita responded yes. He stated as far as the Fire Department is concerned, he doesn't think there is a conflict and are there to work as a team.

ACTION:

First motion: Commissioner Chang moved to approve Proposal 33, Commissioner Lendio seconded that motion. Discussion followed.

Commissioner Chang commented he would be supporting this proposal and is gratifying to see the City Administration of the two departments talk about the level of cooperation and this obviously is the intent to focus on the end user.

Commissioner Mikulina stated he echoes Commissioner Chang and would be supporting the proposal.

Commissioner Lendio stated she is not worried about the litigation and feels they should be fully supported of the two departments and thinks it is the core of the the City does. She stated she would be voting in support of the proposal.

Second motion: Commissioner Sullivan moved to amend the language under Section A to say; "Develop programs and provide the city's emergency medical care and serve as the primary pre-hospital medical resource." Commissioner Lendio seconded that motion. Discussion followed.

Commissioner Myers stated he asked at their previous meeting to put on the agenda to have the ability to amend the proposals and was voted down. He went on to say they would need to defer this proposal to another meeting if they choose to amend the proposal. Commissioner Lendio stated Commissioner Myers was correct. Chair Takaki clarified they only gave authority to amend Proposal 28 at this meeting and would have to wait for another meeting if they would like to amend any of the remaining proposals in the interest of the public to be able to comment fully about it being amended again.

Commissioner Sullivan withdrew her amended motion.

First motion:

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13
NOES: NONE

MOTION PASSED

Chair Takaki asked to take a 5 minute-recess. Commissioner Lendio moved to take a 5-minute recess. Commissioner Pacopac seconded that motion.

***RECESS – 3:37p.m.

***RECONVENE – 3:47p.m.

PROPOSAL 36 - Fire Chief; Revise the Powers, Duties and Functions of the Fire Chief and the Fire Department.

The following individuals testified:

1. Chief Alvin Tomita, Deputy Fire Chief, Honolulu Fire Department
2. Dr. Elizabeth Char, Director, Honolulu Emergency Services Department
3. Tom Heinrich

Chief Alvin Tomita testified he noted the language has not been revised as he thought it would have been as they testified a couple of months ago to contain the word “co-respond” to medical emergencies. He stated he would like to see the proposal thrown completely out and would like to have the opportunity to have the language reflect, “co-respond”.

Commissioner Chang asked Corporation Counsel for the purpose of the Charter Amendment, if it did not have the word “co” in front of respond, would that be substantive revision? Deputy Corporation Counsel Spurlin responded it is substantive although it may have been the intent of the Commissioners it’s a substantive change because they are allocating responsibilities when they say, “co-respond”. Commissioner Myers asked if that would be considered a Style change? Deputy Corporation Counsel Spurlin responded her understanding is the Committee on Style would be making non-substantive changes.

Chair Takaki asked Chief Tomita if they decided to move this proposal on or not with the language not including “co-response” and just say “respond” would he be in favor or not. Chief Tomita responded he knows there would be opposition from EMS but doesn’t know to what degree. He stated as far as the perspective of the Fire Department, he echoed from the previous Administration transitioning to them, they wanted to reflect the old scope of services and maybe perhaps there may have been a mistake in wording the word “respond to”. He goes on to say they do “respond to” medical emergencies and the word “co-respond” is a more accurate description.

Commissioner Grau commented in light of the fact that EMS was identified as the primary responder and the notion that the Fire Department responds and it’s implicit that it’s a co-response because the primary responder would have already been identified.

Commissioner Kawashima asked Chief Tomita for clarification on his response of Chair Takaki’s question asking of the proposal was to move forward without the word “co-response” and just respond, whether he would still be in favor of the proposal moving forward? Chief Takaki responded he is representing others of the Fire Department and stated they would like to see the proposal move forward as far as “responding to” an medical emergency. He went on to say in essence although they do “co-respond” with other agencies primarily EMS, they do respond to emergencies.

Chair Takaki asked Dr. Char to come forward and answer questions from the Commissioners regarding Proposal 36.

Commissioner Grau asked Dr. Char in light of the fact that Proposal 33 identifies EMS as the primary pre-hospital, he would argue that emergency is the sub-set of pre-hospital and asked if she also sees it that way? Dr. Char responded she thinks the question has to do with Emergency Medical response versus being a resource and they are identified as the primary pre-hospital resource but necessarily respond. Commissioner Grau stated emergency care is the subset of pre-hospital. Dr. Char responded she would argue it the other way around. Commissioner Grau stated the idea that EMS is the primary pre-hospital care, does that not make it explicit that pre-hospital care that the Fire Department may provide is not primary, therefore is a co-response. Dr. Char responded she thinks the wording has to do with the primary responding agency. She

stated they do support Fire Department's proposal and in terms of the wording she understands there are some legalities but would not be the best person to address that. Chair Takaki asked if she would support the proposal as written without "co-respond". Dr. Char responded they support it but doesn't know if it bring any legal conflict and reiterated they support the spirit of what they are trying to do.

Commissioner Chang asked Dr. Char if the matter was to ever be litigated and there was an attempt by the court to define the word "respond", wouldn't they go back to the intent of the Charter Commission which is reflected in the minutes? Deputy Corporation Counsel Spurlin responded she thinks they would go back to the minutes if the language were ambiguous. She clarified if the language is not ambiguous, they do not go back to the minutes. Commissioner Chang commented there is ambiguity currently. Deputy Corporation Counsel Spurlin responded the ambiguity is who's primary and it appears both are primary as written so both agencies have a duty to respond.

Commissioner Meder commented if they are doing it currently and the Deputy Fire Chief is interested in putting "co-respond" in the proposal, he would be inclined to think to clarify and go back to Proposal 33 to add the word "primary". He stated if the put the word "co" in Proposal 36 that would identify one as the prime. Commissioner Lendio stated unfortunately it was a unanimous vote and only those who voted no on the prior proposal can bring a motion to reconsider, so that would be an option not available to the Commission at this time.

Commissioner Grau stated the more important issue is if the wording for Proposal 36 were to be adopted into the charter, it would provide the basis for the Fire Department to provide and respond to emergencies and provide emergency medical in hazardous materials. He went on to say right now that current wording is not there and asked Corporation Counsel would that place the Fire Department in jeopardy because it's not there? He clarified he feels the problem of primary and secondary as being an issue but it's providing a charter basis for the Fire Department to do these things. Deputy Corporation Counsel Spurlin asked for a point of clarification of Commissioner Grau. She asked Commissioner Grau if he was talking about the Hazmat language or the co-respond language? Commissioner Grau responded he's not suggesting to add the word "co-respond", he thinks they're implicit in the word "response" as "co-response" as the way they are currently operating and is not troubled by that. He went on to say what would lead him to vote in favor of the proposal is that the Fire Department is in sense protected by the fact that the Charter would call future for them to respond to emergency medical and Hazardous material instances which it does not now state and they are providing a service to the community for which there isn't a charter basis at the moment. Deputy Corporation Counsel stated she could take the position that they do not need the language because the language currently says they are to respond to emergencies on the seas and on the terrain and it doesn't define what types of emergencies. She stated the language is to further detail what "emergencies" are but it doesn't prohibit them from responding today. Commissioner Grau clarified HFD are not at risk at the moment of the current charter language when they respond to emergency medical and hazardous materials? Deputy Corporation Counsel Spurlin responded she doesn't think so because they already have that charter authority. Commissioner Grau commented based on what Deputy Corporation Counsel Spurlin just told him he doesn't see any reason on moving the proposal forward.

Commissioner Lendio commented she would support the proposal to move forward because she feels it may affect their grant application in terms of federal funding and various other things they need to combat the Hazmat problems. She stated procedurally the Commission can move the proposal forward and if the City Council feels that there is something that arises out of litigation or something happens between 2006 and 2008 and if there's a need to put "co-response" in, the City Council can pass a charter amendment and put it on the 2008 ballot. She went on to say at this point she's willing to have it go forward as is and think it's important to grant ability and their functions and to delineate specifically what they are responsible for and urged to move this proposal forward.

Commissioner Grau asked Chief Tomita if they are presently excluded from certain grant programs because the charter proposed language is not in the charter? Chief Tomita responded as far as the grant process itself, they haven't been denied access to Hazardous materials from Homeland Security grants. He stated as far as medical equipment, they have not based the request via grants toward medical equipment. But specifically on Hazmat, it hasn't been denied because of the charter language. Chief stated that grant monies are drying up and after 9/11 there was an influx of grant opportunities and HFD was able to receive these grants and these particular grants that only allow Fire Departments to apply. Commissioner Grau stated he wants to be supportive of the Fire Department and would vote in support of the proposal if Chief would like him to he would try to honor that but on the other hand the Commission as a practice would like to minimize the number of proposals that go onto the ballot. He went on to clarify to Chief Tomita if he tells him it is critically important that the language be in the charter, he would get his vote. If Chief tells Commissioner Grau that it's just nice to have, he would probably not vote in favor. Chief Tomita stated he is representing others of the Fire Department including past chiefs and would say it is very important to them as it was at the time the submitted the proposal. Chief Tomita commented his personal opinion is he wants the language to reflect what they do because there are always questions when it is generalized.

Commissioner Kawashima asked Corporation Counsel in anticipation of a motion to amend or defer, they had suggested language earlier in conjunction with EMS and now there's talk about "co-respond", does the verbiage make a difference to them? Deputy Corporation Counsel Spurlin responded as long as the language in Proposal 36 is consistent with the language in Proposal 33, if they say primary in Proposal 33 then they would use similar language in Proposal 36 so there is no conflict.

Tom Heinrich testified since Proposal 33 cannot be reconsidered today he suggest they may want to take into the context of a future meeting so that both Proposal 33 and 36 be coordinated with the language. He stated he is in support of Proposal 36 without the need of the "co-respond" language because "co-respond" is subordinate to "respond". He went on to say he thinks some of the other language that is included in Proposal 36 is important as to better reflect the scope of the duties that are now performed by the Fire Department and the respective divisions of EMS. Mr. Heinrich pointed out to the Commissioners, Section 13-120 – Coordination of work. He stated it doesn't have some of the other language that he would like to see, but the coordination of work among the several agencies of the city also does address in that regard the "co-respond" element,

the cooperation among the various departments. He went on to say the intent is there, but if the Commission decides to add some of the terms, they might want to add to the agenda to include the opportunity to re-address Proposal 33 and 36 so that it be done in tandem.

Commissioner Lendio stated she has a point of clarification and stated her earlier comment about reconsidering Proposal 33 could be done by anyone on the winning side of the vote.

ACTION:

First Motion: Commissioner Myers moved that they defer Proposal 36 to a future meeting with the intention to amend. Commissioner Lendio seconded that motion. Discussion followed.

Commissioner Mikulina stated there has been a lot of discussion on the proposal and heard from the Fire Chief who is representing others of the department stating this is important but would not jeopardize funding which was one of the stronger drivers of this forward. He commented this might be one of the issues that they leave for the City Council to act upon in the 2008 ballot to make things easier for the Commission and to still accomplish what they need to accomplish.

Commissioner Lendio stated she is comfortable with Proposal 33 and 36 in its current form and would be voting no on the motion to defer.

AYES: MYERS – 1
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER, MIKULINA, PACOPAC, SULLIVAN, TOM - 12

MOTION TO DEFER FAILED.

Second Motion: Commissioner Lendio moved to approve Proposal 36. Commissioner Chang seconded that motion. No discussion followed.

AYES: CHANG, COFFEE, HIRANO, KAWASHIMA, LENDIO, MEDER, MYERS, PACOPAC, SULLIVAN, TOM - 10
NOES: TAKAKI, GRAU, MIKULINA - 3

SECOND MOTION PASSED.

**** [PROPOSAL 45](#) - Board of Water Supply; Amend qualifications of Board Members.**

The following individuals testified:

1. William Reese Liggett
2. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
3. William Ail

Written testimony:

1. Alan Murakami, Litigation Director, Native Hawaiian Legal Corporation
2. Clyde Namuo, Administrator, OHA
3. William Reese Liggett
4. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
5. Nara Takakawa
6. Chris Colgrove
7. Clifford Lum, Manager and Chief Engineer, Honolulu Board of Water Supply
8. Michelle Jaffe
9. Annette Kaohelauii

William Reese Liggett testified in support of Proposal 45. He read his written testimony into the record.

Marjorie Ziegler testified in support and read her written testimony into the record.

William Aila testified in support. He stated the previous speakers who testified before him covered everything he wanted to say. He went on to say other State agencies including the HTA have adopted members with Hawaiian Culture expertise to be on their boards. Mr. Aila stated this is a natural progression for Hawaii. It's a natural progression for the Honolulu Board of Water Supply for it's increasingly looking towards taking care of watersheds that are increasingly important to the Board of Water Supply. He went on to say having someone with a cultural understanding of the relationship of rebuilding watersheds and watersheds to the supply of water and the management of the agency; he thinks it is critical that this charter amendment passes. Commissioner Mikulina asked Mr. Aila to comment on the Board of Water Supply's written testimony by Mr. Clifford Lum, "there are many stakeholder groups who have an interest in the decisions and policies set by the Board of Water Supply. Accordingly, we do not believe that one stakeholder group should be recognized in the City Charter, while others are not recognized." Commissioner Mikulina asked Mr. Aila if he thinks Native Hawaiians are stakeholder groups and are Native Hawaiian Groups unique in Hawaii? Mr. Aila responded yes, the Board of Water Supply is accountable to many stakeholder groups, but the one main difference is in the Water Code and in the State Constitution it specifies Native Hawaiian uses and Native Hawaiian understanding. Mr. Aila stated that's what makes the Native Hawaiian perspective or someone with a Native Hawaiian perspective uniquely qualified to serve on the Board of Water Supply and uniquely qualified to have an impact. He went on to say to have a Native Hawaiian Cultural Practitioner who understands the water cycle not only in a physical sense but in a spiritual sense also and he feels that person would be a valuable addition and the decisions that come out of the Board of Water Supply's board would be much better decisions because they would have that additional insight. Mr. Aila responded yes to Commissioner Mikulina's earlier question and feels they are a special group and they are so special that it's in the State Constitution and the Water Code.

Commissioner Meder asked Mr. Aila to reiterate the language in the Water Code. Mr. Aila responded the Water Code Ms. Ziegler talked about is there is a provision in the State Constitution and within the Water Code that water has to be set aside for traditional and customary uses. He gave examples such as growing taro and servicing Hawaiian Homestead Association. He stated those are things in the State Constitution

and the Water Code which makes it more important that the Board of Water Supply take the focus and direction from the Constitution, Water Commission and agencies that have a broader responsibility for water and to implement something that's very similar. He noted the Board of Water Supply had that with the retired Chief Engineer Cliff Jamile who had a great understanding of water and how it pertains to Hawaiian Cultural practices. Mr. Aila stated Mr. Jamile implemented programs whereby the inclusion of projects that had cultural merit, that had rainforest restoration and understood those values and caused the Board of Water Supply to look beyond providing water and actually take care of the watershed.

Commissioner Coffee asked Mr. Aila what does he see as a positive impact and how would that be realized. Commissioner Coffee asked for an example. Mr. Aila responded in Waianae there is the beginning of a project to create a Hawaiian Cultural Learning Center on Board of Water Supply land. He stated they have gone through the process of defining the property and doing the cultural assessment of what is there so that they don't disturb that. He clarified the idea behind the cultural learning center is to teach Hawaiians and non Hawaiians about the importance of water conservation, forest restoration, understanding that water is essential for life. Mr. Aila commented he feels the important impact could be changing how people look at water, use water and how they behave which is what the Board of Water Supply advertises in trying to change people's behavior. Commissioner Coffee asked Mr. Aila in his example how would this program be jeopardized if the Proposal does not move forward? Mr. Aila responded it wouldn't be jeopardized but it would be enhanced and there would be this change in context of how we view the current operations of the Board of Water Supply.

Commissioner Hirano stated she understands that the Board of Water Supply's motto, "Water for Life", which is their mission statement. She went on to say they are stewards of the land with water. Mr. Aila responded they are becoming so. Commissioner Hirano commented that Mr. Jamile had started the Board of Water Supply on a mission and thinks the Board continues with that. Mr. Aila commented with Mr. Jamile no longer at the Board of Water Supply, he doesn't think there's enough of an emphasis or a board member who has those qualifications, passion and foresight that Mr. Jamile had to take the Board of Water Supply to the next level.

Commissioner Kawashima asked Mr. Aila if the Board of Water Supply currently focuses on watersheds or protects watersheds? Mr. Aila responded there's a new division within the Board of Water Supply started by Mr. Jamile whose mission is to look at partnerships with landowners within the watershed areas to take care of the watersheds. He commented that's where the future gain in water is going to come from. He stated if they don't care of the forest, all the water would run off in to the streams instead of going into the ground and they would not be able to take out as much water from the aquifers as they normally do. Commissioner Kawashima commented to Mr. Aila's statement that it suggests that the Board of Water Supply is heading in that direction and he views the proposal as the question of are they going to require that a board member have experience in traditional Hawaiian Resource Management. Mr. Aila commented he doesn't see any downside for having someone with that expertise on the board. Commissioner Kawashima stated the question is you never want to hamstring anyone with requirements that they have to do this or that and would want to leave it up to the board with the candidates that they have. Mr. Aila responded he doesn't view it as being

hamstrung but sees it as diversifying the opinions and bringing in additional opinions. Mr. Aila stated that the board is primarily all engineers at the moment. Commissioner Hirano asked Mr. Aila clarification of his statement that the members on board for the Board of Water Supply are currently is made up of engineers? Mr. Aila responded mostly and his recollection that it has been but was uncertain whom currently sits on the board.

Chair Takaki asked Mr. Aila if he personally knows people who would qualify other than Dr. Gon? Mr. Aila responded he knows a lot of people who have spent 50, 60 years tending to taro patches that have an extremely good understanding of water and where it goes and what it should be used for. Chair Takaki stated he thinks that would be the question if the proposal passes they would have to figure out what does that mean? Mr. Aila commented that they should not be afraid of stepping forward and trying something new.

ACTION:

Commissioner Lendio moved to approve Proposal 45. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Lendio stated she is not in favor of the proposal. She stated the Board of Water Supply already as constituted is subject to state law and doesn't have a problem with them with following the Water Code and all the other requirements under the law. She commented with regard to the concerns and the spirit of the proposal, those could be addressed at the Council confirmation process and if the Council or any other lobby or interest group who really wants to make sure that this type of interest is represented on the board, she thinks that it could be done through the nomination, appointment and confirmation process via the City Council. She went on to say she sees no great need to elevate one interest group to be represented on the board via the charter.

Commissioner Grau stated he would be voting in favor of the proposal. He stated he doesn't see it as taking care of an interest group, he sees it as availing themselves of one of the great achievements of their culture to have this type of expertise which is uniquely worldwide available as part of the discussion of the Board of Water Supply and making decisions about water and watershed.

Commissioner Tom stated he would not be support the proposal for many of the same reasons as Commissioner Lendio. He went on to say he feels the City Council has the responsibility to ensure that the board is diversified and meets the needs of the Board of Water Supply and the public can have a great say during the process of the confirmation process in the choice of the selection of those members. Commissioner Tom feels this should be left to the Legislative process and let the City Council have an input on what the board members should be and whom they should be representing.

Commissioner Meder stated he would be support the proposal and have the public make the choice.

Commissioner Mikulina supports the proposal for several reasons. He stated they revised the original proposal of three out of the five seats and now it is requesting only

one of the five would have experience in traditional Hawaiian Water Resource techniques. He went on to say in the Board of Water Supply's written testimony they categorize Native Hawaiians as a stakeholder group. Commissioner Mikulina stated when he thinks stakeholder groups he thinks of Sierra Club, Campbell Estate or any interest groups who have interest in water. He commented Native Hawaiians are afforded unique privileges and rights in this state beyond Sierra Club, Campbell Estate or anyone else may have. He went on to say they are afforded this in the State Constitution and Water Code and the Commission needs to recognize this as they are not simply a stakeholder group, they have an elevated status particularly when it comes to water they have unique rights in regards to water. He went on to say by having that additional voice making these allocation decisions could preclude further litigation. He commented when the Board of Water Supply doesn't have the proper input or they make decisions that might impinge on Native Hawaiian Rights it invites litigation such as the Waiahole case. Commissioner Mikulina stated the Legislature had done this with the State Water Commission and requires the Commission to have one person dedicated with substantial experience and Native Hawaiian techniques and resource experience.

Commissioner Hirano stated she would be voting against the proposal.

Commissioner Kawashima asked the Commissioners if in the recent past been any board members with this type of experience? If not, why not? Commissioner Mikulina responded he doesn't know and referred to Commissioner Lendio, as she is a past board member. Commissioner Lendio responded she believes Mr. Herb Kaopua had some background. She went on to say she thinks the Board is very astute and if they don't have that expertise, they hire consultants to give them that expertise. She stated they have had many public testimonies on certain issues where they take testimonies on Hawaiian Water Rights and try to work with all the State agencies and all the various interest groups on certain developments. She went on to say it's something that is of great importance and understands Commissioner Mikulina and other Commissioners' concerns of how important it is, but that is how they practiced in the past.

Commissioner Pacopac stated he would be voting against the proposal also. He stated he also agrees that flexibility should be given at the level when they deal with selection of Commissioners. He goes on to say he also believes this is not something that should be in the City Charter.

AYES: GRAU, MEDER, MIKULINA, SULLIVAN - 4
NOES: TAKAKI, CHANG, COFFEE, HIRANO, KAWASHIMA, LENDIO, MYERS,
PACOPAC, TOM - 9

MOTION FAILED.

PROPOSAL 49 - Office of Council Services; To authorize the attorneys in the Office of Council Services to serve as legal advisers and legal representatives of the City Council along with the Department of Corporation Counsel.

The following individuals testified:

1. Carrie Okinaga, Corporation Counsel, Department of the Corporation Counsel

2. Barbara Marshall, Councilmember, Honolulu City Council

Written testimony:

1. Barbara Marshall, Councilmember, Honolulu City Council
2. Donovan Dela Cruz, Council Chair, Honolulu City Council
3. Carrie Okinaga, Corporation Counsel, Department of the Corporation Counsel

Carrie Okinaga testified in opposition to Proposal 49. She stated the affect would fundamentally alter the framework of city governance. She went on to say the written Charter Commission history, the express language of the past charter clearly demonstrate prior Charter Commission's considered the relationship of Corporation Counsel vis-à-vis City Council vis-à-vis the Office of Council Services and have repeatedly consciously affirmed this framework. While fraught with potential conflict, she looks at it as they have taken away the probably much more frequent conflict that would arise by having two sets of advocates representing two distinct branches of government. Taking away that conflict, they can put part of the money they would save from litigation into the Corporation Counsel's foursquare responsibilities. Ms. Okinaga stated they try to resolve a lot of the conflict in that one opinion that they issue to whatever branch of government asks. She states since the first Charter Commission, Corporation Counsel has been the attorney for all branches and all agencies. She went on to say the 1971-1972 Charter Commission is given credit for the strong mayor strong Council framework. They also established the Office of Council Services. Ms. Okinaga read from their final report pages 20 and 21, "The Commission is aware that the provision which authorize the Council to hire it's own attorney or special Council would give rights to question on a jurisdiction and scope of the powers of the Corporation Counsel. The Commission intends that the Corporation Counsel serve as the chief legal adviser for all City agencies, the Council and all officers and employees with respect to matters dealing with their official powers and duties and serve as the legal representative of the City in all legal proceedings." She stated aside from the Legislative history, the language of the Charter reflects the policy they believe still has merit. She went on to say as she stated earlier if they have two sets of advocates representing people with inherently distinct interests, there would be more conflict and more litigation and the Commission consciously chose this framework to put Corporation Counsel in. Ms. Okinaga stated the two concerns Chair Dela Cruz gave the first time around, was the concern over the attorney-client relationship. She stated that she would fight to her dying breath to say that any conversation between Councilmembers and attorneys and Office of Council Services are privileged to the extent privilege and confidentiality requirements meet the attorney-client privilege law, they would fight for that right on behalf of Councilmembers. Her second concern would be the open meetings and the question about if they have an open meeting with someone other than Corporation Counsel, she thinks this is already resolved by the Charter in Charter Section 3-107.8 line 6, "With the exception of consultations with the Corporation Counsel on claims where premature public disclosure of information would adversely affect the city's interest and consultation with its own counsel or staff, all council committee meetings shall be open to the public." She stated when they researched "own counsel" legislative history said own special counsel so that's a conflict situation, outside counsel.

Commissioner Lendio stated she thinks the primary concern of the City Council was the privilege issue. Commissioner Lendio asked Ms. Okinaga if there have been any

privilege problems with OCS and Corporation Counsel and the City Council other than the dispute between OIP and Council? Commissioner Lendio also asked if there has been any situation where the Corporation Counsel has forced the breach of the privilege between OCS and the City Council. Ms. Okinaga responded no. Commissioner Lendio asked Ms. Okinaga has there been any situation, under which that privilege had to be breached or opened in some way between OCS and the City Council? Ms. Okinaga responded not that she's aware of. Commissioner Lendio asked if there had been any court ruling that has been an attack on that privilege relationship? Ms. Okinaga responded there have been countless attacks on the attorney-client privilege. She stated if the conversation happens to be between planners, OCS and Councilmembers that are not going to be privileged. She went on to say if it's something that is not supposed to be confidential, it's not going to be privileged. Ms. Okinaga clarified the scenario would be analyzed under attorney-client privilege law that applies to any attorney and any client in any situation. Commissioner Lendio then asked if there is a direct conflict between the Administration and the City Council, under the Corporation Counsel's duties does the Corporation Counsel have a duty to then hire special counsel on behalf of the City Council? Ms. Okinaga responded if it gets to that point then OCS is actually by Charter the counsel. Commissioner Lendio clarified the City Council is represented under a privilege relationship by attorney.

Councilmember Barbara Marshall stated she was glad to hear the Corporation Counsel testify because that's not what they've been telling the City Council. Councilmember Marshall stated Corporation Counsel has been telling the City Council that their communication with OCS is not privileged. She went on to say they work with OCS very closely when they're drafting legislation, when doing committee work, etc. She stated they were not aware that that communications was not privileged. She went on to say for obvious reasons the Commission can understand it's very necessary in the course of their discussing legislation, how it's drafted, how it's handled, etc. that they have that ability to discuss those things openly with the people who help them draft legislation and were shocked to learn they didn't have the privilege. Councilmember Barbara Marshall stated in all due respect to the Corporation Counsel and if in fact there is no issue then they shouldn't have to worry about the cost of litigation between the both of them. She went on to say the Corporation Counsel represents the administration first and foremost and while by Charter they also represent the Council, there have been numerous times while she's been in office where they have had conflicting information from OCS and Corporation Counsel. She continued to say it's really important she thinks to the Councilmembers that they have that assurance that they have attorneys of their own which is OCS. Councilmember Marshall stated that it's true that the Charter allows that situation where there is a legal conflict for OCS to represent the City Council in Court if Corporation Counsel is representing the Administration against the City Council. She went on to say there are many occurrences in their everyday business where they need legal advice and they are not confident they are getting straight legal advice from Corporation Counsel, which first and foremost, is appointed by and represents the Administration.

Commissioner Lendio asked Councilmember Marshall for clarification regarding different standards in attorney-client privilege when dealing with legislation versus in anticipation of litigation. Commissioner Lendio commented she thinks the courts have differentiated between legislation and consulting with attorney with regards to legislation because a lot

of times the scrutiny is on the intent of the legislation and what that process was. Commissioner Lendio clarified there is a different standard with regard to an attorney-client privilege relationship where you are anticipating litigation and you consult with your lawyer certain client confidences that obviously can not be revealed but impact the defense of any particular case. Commissioner Lendio stated she's trying to understand how Corporation Counsel can make that differentiation and maybe she could come back to address that, but she thinks there is a standard under the purview of the courts as to the relationship in a legislative body versus an attorney-client confidence type of situation in anticipation of litigation. Councilmember Marshall responded she doesn't understand what Commissioner Lendio just asked. Commissioner Lendio explained a lot of Corporate Counsel has certain requirements to make the reporting standard for in house counsel a lot more transparent and it's an evolving standard with regard to the attorney-client privilege. Commissioner Lendio explained when dealing with a legislative body or a corporate body where Corporate Counsel is advising some body; Board of Trustees, City Council, there is a lessening of that standard in the eyes of the court that can be pierced at some point under certain circumstances. She asked Councilmember Marshall if that has been explained to her. Councilmember Marshall responded no. Councilmember Marshall commented from what Commissioner Lendio explained it's obviously more easily pierced that they don't have in the Charter the assurance that they have an attorney-client privilege. Councilmember Marshall commented she agrees with Commissioner Lendio that there is levels of privilege and that courts have and will continue to analyze those levels of privilege. Councilmember Marshall stated if they don't have privilege to begin with, they don't a leg to stand on in terms of asking for legal guidance in their handling and drafting of legislation.

Commissioner Kawashima asked for clarification from Councilmember Marshall when she stated she just found out there is no privilege, how did she get that information? Councilmember Marshall responded she thinks it was given to them verbally. Commissioner Kawashima clarified there was no written opinion on this justification. Councilmember Marshall responded in the affirmative.

ACTION:

Commissioner Lendio moved to approve Proposal 49. Commissioner Meder seconded that motion. Discussion followed.

Commissioner Lendio stated she would be voting against the proposal. She stated she's disconcerted that the conflict problem that would arise in the Corporation Counsel should the voters pass this proposal which she thinks operating as the law firm for the city would be extremely difficult and probably require further charter change in the future.

Commissioner Mikulina stated he would also be voting against the proposal.

AYES: HIRANO, MYERS - 2
NOES: TAKAKI, CHANG, COFFEE, GRAU, KAWASHIMA, LENDIO, MEDER,
 MIKULINA, PACOPAC, SULLIVAN, TOM - 11

MOTION FAILED.

PROPOSAL 51 - Department of Customer Services; Include the Director of Customer Services as a department head who must be nominated by the Mayor, with the advice and consent of the Council, and may be removed by the Mayor.

The following individuals testified:

1. Barbara Marshall, Councilmember, Honolulu City Council

Written testimony:

1. Barbara Marshall, Councilmember, Honolulu City Council

Councilmember Marshall commented she stands on her written testimony in support of the proposal.

ACTION:

Commissioner Lendio moved to approve Proposal 51. Commissioner Mikulina seconded that motion. Discussion followed.

Commissioner Mikulina commented if this proposal would not be combined with the Housekeeping amendments he would be voting against this proposal.

Commissioner Lendio stated this proposal is a policy consideration and it should be affirmatively voted on as a policy consideration and stated she doesn't see it as a housekeeping amendment. Because the proposal is changing the way the appointment process is currently in the charter and thinks it's a policy situation and deferred to Corporation Counsel. Deputy Corporation Counsel Kawauchi stated the proposal was not submitted by the Corporation Counsel and stated they submitted Proposal 74, which did the same thing. Deputy Corporation Counsel Kawauchi stated when they reviewed the charter history it was their impression it was an oversight. She went on to say the charter provision that would be amended refers to Department Heads and Managing Directors being subject to Council confirmation process and the Director of the Department of Customer Services is a department head and by way of information background to her understanding, all of the directors of the Department of Customer Services have been submitted to the Council for Council confirmation notwithstanding the absence of the charter provision.

Commissioner Lendio commented she changed her mind as Deputy Corporation Counsel Kawauchi's statement considers the proposal as a housekeeping amendment.

AYES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13

NOES: NONE

MOTION PASSED.

PROPOSAL 56 - Fire Chief; Establish a 5-year term of office for the Fire Chief.

The following individuals testified:

1. Alvin Tomita, Deputy Fire Chief, Honolulu Fire Department
2. William "Buzzy" Hong, Chairman, Honolulu Fire Commission

Written testimony:

1. Alvin Tomita, Deputy Fire Chief, Honolulu Fire Department
2. William "Buzzy" Hong, Chairman, Honolulu Fire Commission

Deputy Fire Chief Tomita testified they are in opposition to the current language to Proposal 56. Chief Tomita stated it's vague and ambiguous and it can be interpreted as the Fire Chief ends its term at 5 years and that's it. He went on to say the intent of the proposal in their opinion was to mirror the Chief of Police which has an initial 5 year term but the Police Commission has the ability to reinstate the incumbent chief without going through a selection process. Chief Tomita stated the current process the Fire Department has with the Fire Commission is that if the Fire Chief is not doing a good job, there are avenues to remove them at that time. He goes on to say with the Proposal in its current language, they are opposed.

Buzzy Hong testified in opposition to Proposal 56 and stand on their written testimony.

ACTION:

Commissioner Lendio moved to approve Proposal 56. Commissioner Grau seconded that motion. No discussion followed.

AYES: NONE - 0
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13

MOTION FAILED.

PROPOSAL 57 - Transportation; Establish a new, temporary agency in the city to develop the new public transportation system to be funded by the tax surcharge.

The following individuals testified:

1. Barbara Marshall, Councilmember, Honolulu City Council

Written testimony:

1. Barbara Marshall, Councilmember, Honolulu City Council
2. Charles Djou, Councilmember, Honolulu City Council
3. Melvin Kaku, Director, Department of Transportation Services

Councilmember Marshall testified in opposition. She commented she thinks the proposal is premature and unnecessary because there is a Department of Transportation Services. She goes on to say Mr. Kaku is eminently qualified to handle any new transit system should the Council approve it.

ACTION:

Commissioner Lendio moved to approve Proposal 57. Commissioner Grau seconded that motion. No discussion followed.

AYES: NONE - 0
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13

MOTION FAILED.

Chair Takaki asked to take a 5-minute recess. Commissioner Lendio moved to recess, Commissioner Pacopac seconded that motion.

****RECESS 5:05p.m.

****RECONVENE 5:14p.m.

**** PROPOSAL S-9** - Department of Transportation Services - Revise Powers, Duties and Functions; Promote pedestrian- and bicycle-friendly city

The following individuals testified:

1. Melvin Kaku, Director, Department of Transportation Services
2. William Reese Liggett
3. Gary Gill, Kokua Kalihi Valley
4. Chad Taniguchi
5. Ed Johnson
6. John Goody
7. Yamato Milner, Hawaii Bicycling League
8. Chris Clark
9. Randy Ching
10. Carol Fontanive
11. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii

Written testimony:

1. Dr. Chiyome Leinaala Fukino, Director, State Department of Health
2. John Goody
3. Keiki Injury Prevention Coalition
4. Robin Brandt, Na Kama Hele
5. Harry Mattson, Associate State Director, AARP Hawaii
6. William Reese Liggett
7. Don White, President, Earth Trust
8. Sue White, President, Greenpeace Foundation
9. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
10. Noah Pomeroy
11. Jeff Glover
12. Oliver Dameron
13. Albert Benevento
14. Chris Colgrove

15. Hawaii Bicycling League (462 Supporters)
16. Gary Gill, Active Living by Design Program Coordinator, Kokua Kalihi Valley
17. Chad Taniguchi

Melvin Kaku testified in opposition. He stated DTS is committed to providing and promoting bicycle riding as evidenced in the current City's design standard and educational programs. He went on to say the City is currently and would continue to encourage people to choose bicycling as an alternative mode of transportation. He stated they do continue to have construction programs but currently the funds are very limited but they have a series of projects and continue to facilitate, plan and program for those. Commissioner Chang clarified Mr. Kaku's objection is primarily an issue of resource allocations? Mr. Kaku responded in the affirmative. Commissioner Chang asked Mr. Kaku whether or not the State has taken some active interest in advocating some resources allocated to the city so the city can implement the program. Mr. Kaku responded the City has a separate funding program with no resource allocation from the State. He went on to say the State is also responsible as part of the overall Oahu bike plan/master plan for certain key segments. He stated there are elements where they continue dialogue with the State, which in an important part of trying to provide this island-wide system, that they need to plan, and program. Mr. Kaku stated they continue to work subject to the availability of funds for those pieces that they can and continue to plan and program for those but incrementally it's severely limited by the extent of the budget they have.

Commissioner Grau clarified Mr. Kaku's statement regarding DTS is strongly committed to the goals and aspiration of the proposal. Mr. Kaku responded yes. Commissioner Grau then asked if that's true why is Mr. Kaku against the proposal? Mr. Kaku responded he thinks it's a redundant requirement because they are already doing that and it's not necessary for the charter to stipulate this as a requirement. Mr. Kaku goes on to say they are currently functioning and providing that capability and they also have an advisory group. He commented they are working very closely with all the interested parties. Commissioner Grau then asked there is more testimony in favor of this proposal than any other proposal and his inclination is to respect that strong support and to open this to the public to vote on. Mr. Kaku responded in his opinion the city charter currently states that under the Transportation Services they are to plan, design, operate and maintain transportation systems and bicycling is part of that. Mr. Kaku clarified inherently that is his responsibility and they are carrying out that responsibility and he doesn't need another charter amendment to tell him what his responsibilities are and feels it's redundant.

Commissioner Pacopac asked Corporation Counsel if Proposal S-9 could be done through ordinance rather than the charter? Deputy Corporation Counsel Kawauchi responded the ordinance could prioritize the activities of the Department of Transportation Services. Commissioner Pacopac then asked Mr. Kaku if the proposal would be better suited in an ordinance than the charter? Mr. Kaku responded the key phrase "plan, design, operate and maintain transportation." Commissioner Pacopac commented it's in there already.

Commissioner Lendio stated she has some concerns about ambiguity in the new Section 6-170_ proposed. It reads; "It shall be a priority of the department of

transportation services to make Honolulu a pedestrian- and bicycle-friendly city.” She asked Mr. Kaku as the director of transportation services, when he read the proposed section what does “priority” mean to him? Mr. Kaku responded “priority” should be for the public’s safety and as they look at the designs and construction requirements for roads, traffic intersections, they are considerate of all the current traffic standards and follow those guidelines. They look at the national standards in terms of signage. He went on to say they can do the necessary design and construct the necessary requirements to standard but it also needs to be complimented by driver education. Mr. Kaku stated they are installing a lot of high visibility optic signs indicating there is a crosswalk, they are painting the new crosswalk standards into certain limitation and funding and are unable to replace them all but their current policy is as they repave another part of the city they are implementing the new standards. Commissioner Lendio clarified Mr. Kaku mentioned public safety and asked if the design and consideration of transit system with regard to public safety being a priority, does he consider bicycle traffic in that formula as well? Mr. Kaku replied in the affirmative. Commissioner Lendio then asked if he feels that is a priority in terms of what the department looks at? Mr. Kaku responded it has to be looked at the total project requirements and can’t say biking should be the number one priority because ultimately the project has to be safe and serve the public needs and would follow national standards. Commissioner Lendio asked Mr. Kaku in the proposed section it also say “to make Honolulu a pedestrian- and bicycle-friendly city”, does he think Honolulu is a pedestrian- and bicycle-friendly city now or what does that mean to him? Mr. Kaku responded he thinks where they have opportunities to have the sidewalks, bike lanes, crosswalks, they are judiciously trying to put them in where those public needs are. He went on to say unfortunately they cannot put them all in the desired locations the constituents want. Commissioner Lendio asked Mr. Kaku if he gets this mandate from the voters, has he thought about how they would implement this particular provision? Mr. Kaku responded not at that time.

Commissioner Grau asked Mr. Kaku if theoretically the proposal moves forward to the ballot and the public votes in favor of the proposal, wouldn’t that give the department more resources and a perhaps a stronger mandate to do what they are already doing? Mr. Kaku responded under their mandate, they would take those mandates and go back to the City Council and submit the necessary appropriate budgets. He clarified the City Council as well as the administration would have to agree what those priorities are and judiciously decided based on limited resources based on priorities and how best to implement those. Mr. Kaku stated the department would look at all the different priorities and identify those that they feel should be addressed but are subject to the budget review process.

Commissioner Sullivan clarified that the Commission is voting to whether or not to let the public vote on the proposal. She stated she would be voting in favor of a motion to move this proposal on to the ballot to let the public decide. She asked Mr. Kaku if the public voted overwhelmingly in support could he take that into consideration on how they have to prioritize what they do in the department? Mr. Kaku responded yes he would.

Commissioner Coffee asked Mr. Kaku would the City Council also look at it in the same way because the funding and priority has to come from them? Mr. Kaku responded to characterize that the budget would be \$200,000 - \$300,000 worth of project money as compared to several hundred million in terms of the overall type of budget he would

have under the CIP. Commissioner Coffee asked Mr. Kaku to give the Commission and idea of the current level of priority is to give a few examples of projects the department is working on at the onset of his testimony. Mr. Kaku responded they are finishing up the restroom facility in Diamond Head which is nearing completion, would be starting some facilities to include the last segment at Ala Moana and Kewalo Basin and some other projects but could not remember them all. He stated they have to balance the requirements for construction as well as maintenance all within the budget.

Chair Takaki asked Mr. Kaku how often does the department meet with the advisory group? Mr. Kaku responded there is a bike advisory group. Chair Takaki asked Mr. Kaku if they get input from the bicycling league? Mr. Kaku responded they have different representatives and they meet once a month at the DTS office. He went on to say the provide recommendations with regards to what they believe would be their priorities. Chair Takaki stated the Commission has received 500 people in support of the proposal and some of the testifiers have stated they haven't been getting all the response they needed and asked Mr. Kaku if there was a big project they may have been pushing for that hasn't received the funding? Mr. Kaku responded the most recent request he has seen was regarding for the City to take over the responsibility for the Kipapa Gulch segment, which belongs to the State. He stated he has responded that the City cannot take on that responsibility and it has to go back to the State vis-à-vis there's also a request for the North Shore. He went on to say there are certain segments that are the State's responsibility and they need to plan and program accordingly. Chair Takaki ask if there was anything that the City is responsible for that the bicycling advisory group has asked for? Mr. Kaku responded there is a whole list of backlogged projects and they can only fund those that are within their resources. He went on to say there are plans to look towards the 2007-08 and at his last meeting he has asked that they work together to identify those priorities but if the budget does not allow for the successful implementation, they have to look at it over a successive number of years.

William Reese-Liggett testified in support of Proposal S-9. He read his written testimony into the record.

Chair Takaki asked Corporation Counsel if they foresee any liability concerns that arise for the City if the proposal was to pass and approved for the Charter? Deputy Corporation Counsel Kawauchi responded she wouldn't characterize it as liability but there is a question about whether the department would be in compliance with the charter provision when there is a language that says "it shall be a priority". She stated as to the allocation of the city resources to the various transportation projects, there would be a factual determination as to whether or not the allocation satisfies the charter language.

Gary Gill testified in support. He highlighted his written testimony into the record. Commissioner Lendio asked Mr. Gill if he thinks this is a legislative function and not a charter function? Mr. Gill responded he thinks it is appropriate for the Charter. He went on to say he thinks the Charter lays out the goals and objectives of the City very clearly. It's the public's direction to their city government of what is important and thinks it's appropriate that a policy language like this be inserted. Commissioner Lendio commented she doesn't have a problem with the first portion of the proposal but she has

a problem with the new section proposed. She stated the approach to elevating as a policy matter the importance of bikeways, planning, operating and maintaining them. She went on to say if the first section was left without the new proposed section, she thinks there would be a great argument in introducing legislation before the City Council that the voters has elevated bikeways to the level and importance of transit and that was her approach to it. Commissioner Lendio stated she feels the second part is so vague and every time a design comes out for a transit way, a lawyer could say the City didn't give bikeways or pedestrian an absolute priority and even in regards to transit. She stated she would be voting against the proposal because it would be mandated by the charter and thinks legislatively and feels it should be left at that level. Mr. Gill responded if they stop doing the right things because they are afraid of lawyers, they might as well just give up. He stated he thinks it's a great thing the have the public involved in specific designs of public infrastructure in a way to allow them to ride their bike or walk. He went on to say maybe it's an overreaction and maybe a lot of pent up frustration but it's saying they need that change and feels the charter is the appropriate place to do it.

Chad Taniguchi testified in support. He commented he believes Mr. Kaku wants to move Honolulu into a better bikeway and pedestrian friendly place but what happens when he is not there? Does that mean people, citizens, advocates always have to come back and persuade the next person to make Honolulu a bike and pedestrian friendly city. Mr. Taniguchi clarified Mr. Kaku does not have the resources to make Honolulu a bicycle and pedestrian friendly city. He stated he serves on the Mayor's Bike Advisory Committee and works with Chris Sayers of DTS and have been working on a plan for the past two years to redo from Kapiolani Park up to Diamond Head. He goes on to say the plan has been ready to go for two years and it took very long for the surfers, the runners and everyone to agree on the plan. He stated when they asked Mr. Sayers when would the construction start, he responded it would start when it starts. Mr. Taniguchi clarified Mr. Sayers is also frustrated but is unable to do anything more.

Ed Johnson testified in support. He stated Honolulu is in greater need than any other state to develop alternative transportation to the automobile since we are dependent for a very high cost gasoline shipped from very long distances in vehicles running on fossil fuel. Mr. Johnson commented the State of Hawaii out of the entire United States is the most dangerous place to walk and bicycle. He stated within the past two years there has been increased public and private awareness of the problem, there has been increased media coverage, the Mayor's Advisory Committee on cycling and a number of others. He went on to say the State Legislature passed a number of bills regarding safety of pedestrian and bicyclist. Mr. Johnson stated the passage of Proposal S-9 is the right message to send to the residents and visitors to Hawaii and solidifies and amplifies all the other efforts.

Yamato Milner testified in support.

Chris Clark testified in support. He stated this amendment would do a big service to the citizens of Hawaii by helping to change the attitude of people both driving and cycling to know it is a priority because he thinks it's obvious that people feels there's a lot more to be done for cycling for Hawaii. Mr. Clark stated he feels education is a big part in bicycling. DTS for many years has supported bike education in the schools. He went on to say they hope to expand that education for adults to help them in knowing how to

cycle safely with cars and personally feels bicycling is part of the vehicle scheme of things as opposed to part of the pedestrian scheme. Commissioner Mikulina commented earlier Chair Takaki asked if this proposal was proposed because perhaps there was a project that was not considered or deleted and asked Mr. Clark if there was something they were particularly upset about or if it was someone unleashing some latent support? Mr. Clark responded he thinks there's some sort of underlying realization with gas prices being as high as they are and maybe bicycling could be a viable option for transportation.

Randy Ching testified in support.

Carol Fontanive testified in support

Marjorie Ziegler testified in support. She read her written testimony into the record.

Chair Takaki asked Researcher Nikki Love to comment on the Commissioners' request to look into the status projects identified as priority bike projects. He also asked her to comment on the Commissioners' second request whether or not other cities that are recognized as bicycling friendly have language in their charter regarding making a bicycling friendly and pedestrian friendly city. Researcher Nikki Love responded regarding bike projects that have taken place or are in progress, some Commissioners asked about Bike Plan Hawaii which is a State Bike Plan, it was last updated in 2003 and none of the priority one projects on Oahu has been completed. Two projects were looked at, one went through the scope process and was decided it was not feasible, another project, Kalaniana'ole Highway is currently in the planning stages. She stated the City also has a bicycle master plan that is separate from the State. It was written in 1999, it included 59 projects as priority one; of those 10 have been completed, 7 are in the design or planning stages and the remaining are possible future projects, 4 other projects not originally in the plan have been completed or in progress. Researcher Love discussed other cities. She researched other cities that have gotten awards in recognition as bicycle friendly. Most of them she hasn't found anything in their city charter, however, their charters are very different for the Honolulu Charter Commission. The other city charters are very short, some don't have charters such as Davis, California because California doesn't require the cities to have a charter. Researcher Love stated on the other end of the spectrum, San Francisco has something called a Transit First policy, which is 10 paragraphs long, and some of them deal with pedestrian and bicycle priorities. She noted Maui County's Charter states "The department is responsible for the planning and implementation of all modes of transportation in Maui County."

ACTION:

Commissioner Lendio moved to approve Proposal S-9. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Grau commented this is really a public health issue. The childhood obesity is rising and directly attributable to the lack of exercise. He went on to say our transportation in our city is serving cars and not people. He thinks it's really important to let the public express themselves and give them a chance to vote.

Commissioner Myers stated he would be voting against the proposal because he thinks it would better handled through the legislative process and put into the City's master plan. He commented the word "priority" bothers him because if bikes were to become a priority, what city service are they willing to give up to make that a priority because the funds are not there. He went on to say some of the roads don't have space and envision losing a lane to support bikeway and doesn't think he would be able to live with that either. Commissioner Myers commented he is going to rely on the City Council to deal with this.

Commissioner Coffee stated he's a member of the Bicycle League and is proud of their program teaching children safe bicycling. He went on to say ironically a comment made earlier by a testifier about once they are taught there is no place for them to ride their bicycle. Commissioner Coffee stated he uses the Pearl Harbor bikeway extensively for some lengths of distance and does not worry about getting banged or side swiped by a bus or car. He commented someone used the term that this proposal might be a lofty goal. He went on to say lofty goals is what the Charter is about and thinks this is an area where the Commission could provide the ammunition for the people who feel strongly about changing the priorities and could then refer to the charter as a mandate to a degree and would be voting in favor of the proposal.

Commissioner Mikulina stated he echoes Commissioner Coffee. He stated he may have a conflict of interest because he bikes everyday to work and is in fear of his life when riding his bike to work and going home at night frequently in the dark. He stated he is compelled by the outpouring support from the public. He thinks this important and should allow the public to vote and see what happens. Commissioner Mikulina commented too many bicyclists and pedestrians are being killed and feels they need to elevate this in the charter and thinks it's a statement they have the ability to make now and urge the other Commissioners' support.

Commissioner Hirano stated her heart is in support of the proposal but her head is telling her it doesn't belong in the charter therefore she will be voting no against the proposal.

Commissioner Sullivan would be voting in support of this proposal. She stated she thinks it is time to make this a priority in the City and County of Honolulu. Commissioner Sullivan stated there's an economic benefit to this proposal. She went on to say when looking at any economic measure today when people are looking at what constitutes a livable city; there are certain widely accepted measures. Among them cost of living, affordable housing, jobs and this particular pedestrian- and-bicycle friendly city is a consistent criteria and is one of the things that it takes to be considered actually a forward thinking city where people want to live and work. She went on to say there is an economic side to this and thinks is something they can't discount and it's a statement about the future and where they should be heading.

Commissioner Kawashima asked Corporation Counsel for clarification about their statement made earlier to Chair Takaki's question. Commissioner Kawashima asked Corporation Counsel to clarify their import of their statement and what they see the ramification of the language of the use of the word "priority" and stated they wouldn't use the word litigation and asked that they expand what their intentions were. Deputy

Corporation Counsel Kawauchi responded the department would be mandated to comply with this charter provision and thinks there would always be a question to whether its actions satisfy the charter requirement that the pedestrian friendly and bicycle friendly was made a priority in the department's activity that year or in its planning of transportation systems. She went on to say there is a possibility that litigation may ensue because some segment of the community would say that the decision to go forward with "x" instead of a bicycle or pedestrian projects means that the agency did not satisfy the charter mandate. Deputy Corporation Counsel Kawauchi stated even before it gets to litigation, the standard would be difficult to quantify; how do they know that the department has indeed satisfy that charter mandate? What does it need to do to satisfy that charter mandate? Commissioner Kawashima stated ultimately Corporation Counsels' concern is the litigation stated concern? Deputy Corporation Counsel Kawauchi responded not ultimately but at an early level the agency would go to Corporation Counsel and ask what do they need to do to comply with the charter?

Commissioner Grau asked Corporation Counsel wouldn't that is true that it could be litigated for any service the city provides? Deputy Corporation Counsel Kawauchi responded yes but she is unfamiliar with any other charter that requires any activity to be made a priority.

Commissioner Tom stated he would be supporting the proposal. He asked the bicyclists to support Mr. Kaku and to direct their energy to the City Council to get the funding because if they don't get that funding they would be in the same position 10 years from now as they are today.

Commissioner Coffee suggested by the Commission supporting this proposal and putting it on the ballot and possibly passing by the public would enhance the possibility of getting that funding. He went on to say that bus rider ship has gone up because of gasoline prices are going up and there are going to be more bicyclists on the street in conjunction with buses or on their own.

AYES: COFFEE, GRAU, KAWASHIMA, MEDER, MIKULINA, SULLIVAN, TOM -

7
NOES: TAKAKI, CHANG, HIRANO, LENDIO, MYERS, PACOPAC - 6

MOTION PASSED.

Commissioner Lendio moved to take a 20-minute recess. Commissioner Pacopac seconded that motion.

***RECESS 6:20 p.m.

***RECONVENE 6:40 p.m.

CATEGORY 3: PLANNING, ZONING, AND ENVIRONMENT

PROPOSAL 7 - Sustainable Community Plans and Development Plans.

The following individuals testified:
NONE

Written testimony:

1. Richard Poirer, Chair, Mililani/Waipio/Melemau Neighborhood Board
2. Carl Takamura, Executive Director, Hawaii Business Roundtable
3. Lance Tanaka, Vice President and Manager, Government Affairs, Bank of Hawaii

ACTION:

Commissioner Lendio moved to approve Proposal 7. Commissioner Mikulina seconded that motion. Discussion followed.

Commissioner Pacopac stated he would be voting against the proposal and commented that he doesn't think this belongs in the charter and could be done through ordinance.

Commissioner Mikulina stated there are other more important issues and would be voting against this proposal. He asked Corporation Counsel for their opinion of this proposal could it be enacted by the City Council if they are amending the charter, not through ordinance. Deputy Corporation Counsel Sunakoda responded their opinion would be the terminology change would have to be done by charter amendment.

Commissioner Tom commented his understanding is the names have already been changed and that the development plans are now known as the sustainable plans. He went on to say several of them are known as the sustainable community plans, not all but some. Deputy Corporation Counsel Sunakoda clarified that Commissioner Tom is correct with respect to the fact that there are references to the various sustainable community plans that are incorporated as part of the Revised Ordinances of Honolulu. But with respect to general reference in the charter and the proposed amendment to change the wording, their office's opinion is that it would have to be done via charter amendment.

AYES: MEDER - 1
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 12

MOTION FAILED.

PROPOSAL 21 – Planning and Zoning; Urban growth boundaries.

The following individuals testified:

1. Dean Uchida, Executive Director, LURF
2. Mike Kido, External Affairs, The Pacific Resource Partnership
3. Paul Oshiro, Manager, Government Affairs, Alexander and Baldwin, Inc.
4. Henry Eng, Director, Department of Planning and Permitting
5. Jim Tollefson, President, Chamber of Commerce of Hawaii
6. Steve Hoag, Director of Human Resources and Government Relations, Hawaii Reserves, Inc./BYU Hawaii and Polynesian Cultural Center.

7. William "Buzz" Hong, Executive Director, Hawaii Building and Construction Trades Council
8. Thomas Yamabe
9. Carlton Ching, Castle and Cooke Hawaii
10. Alexander Joseph Fadrowsky, III
11. William Reese Liggett

Written testimony:

1. Richard Poirer, Chair, Mililani/Waipio/Melemau Neighborhood Board
2. Carl Takamura, Executive Director, Hawaii Business Roundtable
3. William "Buzz" Hong, Executive Director, Hawaii Building and Construction Trades Council
4. Thomas Yamabe
5. Dean Uchida, Executive Director, LURF
6. Alan Shintani, President, BIA-Hawaii
7. R. Eric Beaver, President and CEO, Hawaii Reserves, Inc.
8. Steve Hoag, Director of Human Resources and Government Relations, Hawaii Reserves, Inc. (combined as R. Eric Beaver testimony)
9. Eric Shumway, President, BYU-Hawaii
10. Paul Schwind
11. Jim Tollefson, President, Chamber of Commerce of Hawaii
12. Paul Oshiro, Manager, Government Relations, Alexander and Baldwin, Inc.
13. Kyle Chock, Executive Director, The Pacific Resource Partnership
14. Miles T. Nishijima, Assistant Vice President/Asset Management, Kaneohe Ranch Management
15. Richard Mirikitani, Senior Vice President and Corporate Counsel, Castle & Cooke Hawaii
16. Tosh Hosoda, Senior Vice President – Planning, The Gentry Companies
17. Craig Watase, President, Mark Development, Inc.
18. A. Joseph Fadrowsky, III
19. Von D. Orgill, President & CEO, Polynesian Cultural Center
20. Ronald G. Nishihara, Project Manager, Castle & Cooke Hawaii
21. Hawaii Carpenters Union
22. Lance Tanaka, Vice President and Manager of Government Affairs, Bank of Hawaii
23. Henry Eng, Director, Department of Planning and Permitting

Dean Uchida testified in opposition to the proposal. Mr. Uchida stated they combined their testimony for Proposal 21, 47 and 69. He went on to say they included some information they found from the Urban Land Institute who did a publication in 1999 called "Smart Growth: Myth and Fact". He highlighted his written testimony into the record. Commissioner Mikulina stated there was testimony received by the Department of Planning and Permitting and it states there are Urban Growth Boundaries already in the development plan and asked Mr. Uchida to respond to that. Mr. Uchida responded it's in the development plan but those are not in the charter. He went on to say elevating these things in the charter would really restrict what future administrations can and cannot do. Commissioner Mikulina then asked Mr. Uchida which proposal is he most concerned with, the urban growth boundaries or the 2/3rds vote? Mr. Uchida responded both of them, if they are saying urban growth boundaries shouldn't be in the charter, so if that doesn't go into the charter than the 2/3rds vote is really a non-issue. Commissioner

Mikulina clarified that Mr. Uchida's biggest concern is infrastructure improvements? Mr. Uchida responded his biggest concern is these types of growth management tools shouldn't be in the charter. He went on to say it's appropriate in the development plan and in the general plan but not in the charter.

Commissioner Chang asked Mr. Uchida to clarify at the past hearing, Mr. Uchida made a comment that if there were to be a charter imposed to remove boundaries, then there would out of necessity need to have a companion requirement that the city be required to provide the necessary infrastructure in order to accommodate whatever growth as you may determine within the urban growth boundaries. He asked Mr. Uchida if that was correct? Mr. Uchida responded yes. Commissioner Chang then asked without that then it would put an impossible burden on the City to try to accommodate whatever growth may be called for. Mr. Uchida responded that's correct, it becomes an anti growth measure. Commissioner Chang asked Mr. Uchida to validate an issue regarding the McCully/Moiliili area. Commissioner Chang stated he met an engineer over the weekend and he brought up an issue stating there has been no growth occurring in the two areas because the Kuhio pump station largely services those areas. Commissioner Chang went on to say that the engineer stated anyone who owns a property and they wish to develop it, they would have to put an equal or like type of facility or structure on that property. They could not consolidate property to build towers in order to create more residential units simply because they would be turned down at the permit level with the city saying they can not accommodate because their pump station could not take that load. Commissioner Chang asked Mr. Uchida if that was what the fact would be if the Commission was to limit or restrict growth only in the urban growth boundaries? Mr. Uchida responded his understanding the old Love's bakery site on Kapahulu was a tremendous opportunity for housing but was limited in capacity and it ended up being a Safeway. That sewer line that broke would have been the same sewer line that would have serviced that property. He went on to say there are situations right now where they don't have enough capacity so they put up urban growth boundaries and the theory is they are going to accommodate urban growth and increase density in the urban core. Mr. Uchida stated if they can't do it right now and they put up urban growth boundaries, where would the growth occur? Commissioner Chang clarified the defect in this proposal is the absence of a companion requirement that would require the city to put the necessary infrastructure. Mr. Uchida responded yes, it's balancing the need to preserve open space with the need to accommodate growth.

Commissioner Mikulina asked Mr. Uchida how does not having urban growth boundaries allowing developers to continue to develop through the fringe or the central parts of Oahu, how would that help situations as far as infrastructure in Kapahulu? Would that provide more resources? Mr. Uchida responded he thinks the issue is if they want to limit growth in the urban fringe areas, then they need to renew and put in more capacity in the urban areas. Commissioner Mikulina followed with a question regarding when a developer gets permission to build, they get some fair share for improvements on the infrastructure, sewer, traffic, schools, is that true? Mr. Uchida responded for development in Ewa or Central Oahu, the master plan developer puts in everything. Mr. Uchida went on to say schools and roads are subject to impact fees and some type of fair share contribution right now, but everything else the developer pays for the collective system, roads internal to the project and it's dedicated over to the city. He went on to say the problem if they try to do that for the Safeway site, if the developer wanted to put

in two towers for residential, they would have to put in exit capacity, log an entire line somehow and how does one developer do that? They can't because the economics aren't there. Commissioner Mikulina asked Mr. Uchida if he supported fair share contribution to make that improvement? Mr. Uchida clarified like an improvement district? Commissioner Mikulina responded that's an option also, but so they could pay their fair share. Mr. Uchida responded he thinks developers have resigned themselves to the front that there would be impact fees, some type of cost sharing for a lot of the publicly funded infrastructure in the future.

Commissioner Chang followed up to the conversation and stated if there is going to be a fair share approach to that in the urban growth boundaries, then the question would be if the owner of the adjacent property is going to be asked as to whether or not they are willing to pay their "share" of the necessary infrastructure that they would not have any direct benefit. Mr. Uchida responded it becomes an improvement district and how do you fund it if when one wants to increase density and the neighbor just want to live in their house. Commissioner Chang commented it would inevitably invite a lot conflict. Mr. Uchida responded there's a lot of challenges to develop the infield and that is one of them on how do they put in the capacity.

Commissioner Sullivan asked for a point of clarification. Proposals 21 and 47 she believes are similar. She went on to say Proposal 47 was she believes submitted by Councilmember Okino and called for establishing by Ordinance, urban growth boundaries and an administrative process of 2/3rds vote. Proposal 21 was similar and she introduced amended language to the proposal and her intent in doing this was to provide another alternative on the issue and reflected what the department currently does and has been doing for numerous years. Commissioner Sullivan asked Mr. Uchida for clarification if he agreed if that is what is currently being done? Mr. Uchida responded he agrees but is saying that they should not put urban growth language in the charter. Commissioner Sullivan clarified that is currently what the practice is. Mr. Uchida stated his testimony was regarding putting urban growth language boundaries in the charter. Commissioner Sullivan then asked Mr. Uchida if he opposed the current practice and is it his intent to change it? Mr. Uchida asked Commissioner Sullivan oppose what practice? Commissioner Sullivan responded what is currently being done. Mr. Uchida clarified in the sustainable Plans and development plans, no. Commissioner Sullivan asked Mr. Uchida if he supports they way it is currently being done? Mr. Uchida responded he does not support it but accepts it.

Commissioner Grau clarified they are not deciding whether or not something should be in the charter or not but what they are doing is giving the public the opportunity to make that decision. Commissioner Grau commented Mr. Uchida is entitled to his opinion as well as the other citizens who live on the island and feels it's important to remember and to let the public decide these types of issues. Commissioner Grau asked Mr. Uchida if the public decided to pass the proposal, would that be a wedge developers might need to get the type of infrastructure within the present urban center that would support more development? Mr. Uchida responded possibly.

Mike Kido testified in opposition to Proposal 21, 47, and 69. He read the written testimony into the record.

Paul Oshiro testified in opposition to Proposal 21, 47 and 69. He highlighted their written testimony. He went on to say they believe with the multi-step land use development evaluation approval process that is in place today that the existing majority vote requirement at each of the three county land use at review levels are adequate to ensure proper land use oversight and control. Chair Takaki asked Mr. Oshiro if they have reviewed the amended language for Proposal 21. Mr. Oshiro responded in the affirmative. Chair Takaki then asked if they stood in opposition. Mr. Oshiro responded in the affirmative.

Henry Eng testified in opposition to Proposal 21 and 47. He read his written testimony into the record. Commissioner Mikulina asked Mr. Eng for clarification regarding his position on Proposal 47. Commissioner Mikulina commented on December 13, 2005, Mr. Eng's position was in support of Proposal 47 in particular stating his support of the 2/3rds vote and asked Mr. Eng what transpired in the last few months that had changed their position. Mr. Eng responded he thinks they had the opportunity to step back and look at the comprehensiveness of all the issues the Commission is dealing with and it's their belief that if measures are already taken care of, then there is no need to add language for things that are being done. Mr. Eng went on to say with respect for the 2/3rds vote, they think Proposal 69 involves the Planning Commission and has some reservations on that and could discuss them later. Commissioner Mikulina asked nonetheless Proposal 47 has not changed and they supported the 2/3rds vote in particular but now has changed his position. Mr. Eng responded he's opposed to anything that would add language to the charter relating to urban growth boundaries as being unnecessary. Commissioner Mikulina questioned the 2/3rds vote in particular that Mr. Eng supported previously. Mr. Eng responded he didn't see it as a standalone thing but saw it as a proposal and as a proposal they are not supporting it. Commissioner Mikulina clarified even though he supported it on December 13, 2005. Mr. Eng responded in the affirmative.

Commissioner Sullivan asked Mr. Eng on the current Community Plan they are reviewing for the foreseeable future is the department intending to keep the past practice which has been to include the land use maps with the rural community boundary and urban growth boundary? Mr. Eng responded as of now yes, they have not done all of them yet. Some are in their infancy, the ones they have started they are not moving away from that. Commissioner Sullivan clarified they intend to follow the prior model. Mr. Eng stated it's a five-year review to determine if changes are needed and at this point he doesn't see any need to change that particular provision.

Jim Tollefson testified in opposition to Proposal 21, 47 and 69 and stands on his written testimony. He highlighted two concerns as stated in his written submission. First they are concerned about the proposal being put in the charter versus the process that is already set up to handle situations such as this. Their other concern is regarding their top priority for the Chamber of Commerce of Hawaii members throughout the state but primarily on Oahu that represent 200,000 employees. Mr. Tollefson stated they are concerned about affordable housing and the impact the proposal could have on limiting the amount of housing and increasing the cost of housing for those employees. He went on to say it's not only for the employees but also their families and where are they going to live if they restrict and continue to drive up the cost of housing.

Steve Hoag testified in opposition to Proposals 21, 47, 69 and 99. He read his written testimony from HRI into the record. Commissioner Grau asked Mr. Hoag if they were not proposing to not protect paradise? Mr. Hoag stated he is proposing that they have a lot of protection in place currently and when adding more regulatory layers, it drives up the cost of development. Commissioner Grau followed up with a question to Mr. Hoag regarding how would not having an urban growth boundaries speed up the permitting? Mr. Hoag responded he thinks there are enough controls in place and is not convinced urban growth boundaries are the best way to go. He went on to say there are residents in the county who would like to see controlled growth and don't necessarily live in the city or don't necessarily want to see density increase.

Commissioner Chang asked Mr. Hoag what the two proposals were adopted by the voters and they were in place prior to development in Laie, how would these proposal have affected that development? Mr. Hoag responded they could conceivably drive up the cost, the time it would take to get to the process. He went on to say he thinks ultimately they would because many in their community need affordable housing and thinks the community would support their projects and their company is not really a development company and are not wild on developers. He went on to say it would increase the time it would take not only for them but also other developers. Commissioner Chang clarified and asked Mr. Hoag did the Legislature a year or two ago recognize the contributions they would make to having affordable housing for members of their organization so that they made some accommodations such so they could provide low cost housing. Mr. Hoag responded that's true. Mr. Hoag stated they sought an exemption from the Lease to Fee conversion loss so that they could develop a leasehold development, which would be primarily for employees, it would be affordable housing. He went on to say if they were going to subsidize that project, they wanted to make sure they would not get the home sold out from under them because of the lease to fee conversion. Commissioner Chang asked Mr. Hoag to clarify that one could infer that the legislature considered the questions that some of the Commissioners are pondering now that they made a policy that made it possible for them to go and develop those projects to make affordable housing available to their members. Mr. Hoag responded that's true although they would still have to go through the same regulatory process as anyone else.

Commissioner Mikulina commented Commissioner Sullivan stated before that this measure quantifies or puts into the charter what City has been doing currently with urban growth boundaries. He asked Mr. Hoag if his organization is objecting to what the city is currently doing with putting urban growth boundaries into the sustainable community plans? Mr. Hoag responded he doesn't know if they are objectionable but in the interest of time he left out the other argument that they felt was important which is that they don't feel this is the type of thing that should be put into the city's constitution and thought it was interesting that Researcher Love mentioned that it was hard finding an analogy or similarly comparable on the bicycle proposals because most city charters are very brief and broad governing documents and they don't get into specifics. He went on to say he doesn't know if they would object to urban growth boundaries out of hand and thinks they do housing in the Laie area, not thousands of homes but a few more homes. But if urban growth boundaries would restrict that or make it more costly to get those homes developed than they would object to that.

William "Buzz" Hong testified in opposition to Proposals 21, 47 and 69. He stands on their written testimony.

Thomas Yamabe testified in support. He went on to say he has a farm in Kamilonui Valley and thinks that may be the only area they city has designated as part of a community development, the farms are like the schools or any other development in the area. Mr. Yamabe stated the reason for his support is there is the sustainable plan and in spite of the sustainable plan he gave the Commissioners his actual experience. He stated in the Hawaii Agricultural area called Kamilonui Valley although it did not go through yet, the landowner and developer proposed to take that out of agriculture and put in urban use in spite of the fact that they had at that time more than 30 years on their lease. He went on to say when they talk about this might be an imposition, he stated for the farmers this is not an imposition but demises the farmers because if they should take it out and they have no authority to keep it in agriculture there is nowhere they could continue farming because they don't have that type of area. Mr. Yamabe commented this is the reason to identify farming area and then to establish the boundaries he thinks is absolutely necessary in spite of the fact they say there is laws that control that. He went on to say what good is a law if they are going to override that law? Mr. Yamabe stated the landowners and developers say they the sustainable plan shows that Kamilonui area is outside of the urban boundary and it's agriculture but at that time they told the farmers they're going to go ahead and change the zoning. He went on to say they are not trying to stop development but what they are saying they are supposed to maintain a well-balanced social economic climate not just for the farmers, developers or landowners but also for the community as a whole. Mr. Yamabe stated that's his philosophy. He commented the Hawaii Community approached him and they have a petition with over 3,000 signature requesting Kamilonui Valley be left open as an open space area. He went on to say their objectives are different and they want to keep it as an open area and agricultural would be the supporting element in keeping that space an open area. Mr. Yamabe commented by farming and getting the open area, there is no cost to city or anyone else because they maintain that open area valley at the farmer's cost and the area is known as watershed where they produce drinking water. He went on to say they are the keepers of the drinking water and they also control the flooding of Kuapa Pond and because of the farming area there, the flooding is minimized. Although some have said the farmers are contaminating the pond but they had professionals testifying that isn't so. Mr. Yamabe commented the agriculture would keep any type of contamination on the farm and not let it go into the Kuapa Pond because of the basic soil condition. He went on to say as far as the contribution is concerned, he thinks every culture industry is making a tremendous contribution but more importantly there must be a balanced social economic condition and would benefit everyone. Mr. Yamabe stated he does understand the city has a sustainable plan that they re-exam the plan every 5 years and under the sustainable plan they set aside sufficient areas for housing and most of the needs of the community. He went on to say these are already included in the sustainable plan and they have lands to develop. He commented he could understand on the part of the landowner and the developer, if they can develop agricultural land or preservation land into housing their cost would be very low and their profit would be much higher. Mr. Yamabe stated because of that situation he feels the proposal is very important because there are some areas such as small agricultural industry that can survive without the support from the rest of the community.

Commissioner Coffee commented he recalls there were a couple of years where the visibility of ag proposal or any changes were very high and asked Mr. Yamabe what does he think kept it from happening? Mr. Yamabe responded the residents in Hawaii Kai saw the danger of what was happening and made a statement they wanted to keep it as an open space. They organized and got 3,000 signatures demanding to keep it as an open space. Mr. Yamabe stated he brought the Bishop Estate lease contract to the community and showed them where it stated, "no changing of the zoning can be allowed unless all the farmers agreed to it." He went on to say there needs to be a unanimous consent before they can change the zoning and take it out of agriculture. They ignored the contract completely he told them he may be one man, but he now represents the majority of the farmers, and the contract says that one man can stop the development if he doesn't give them his consent. He went on to say because of that he thinks they stopped midway and they had so many days to reach agreement between the developer and the landowner. Commissioner Coffee asked if he had advocacy and help from his City Councilmember. Mr. Yamabe responded yes they got support and there was a resolution introduced by Councilmember Charles Djou supporting the open areas in the Kamilonui Valley. He went on to say at that time the resolution passed the Neighborhood Board unanimously and also passed the City Council Zoning Committee and also on the Council level. Mr. Yamabe clarified that was a resolution and does not have any effect of law but the fact is they did get their support.

Carlton Ching testified in opposition. Mr. Ching stated they are land developers and develop homes and commented it's a challenging field. He went on to say there is already in place an extensive comprehensive state and county entitlement process with ample opportunity for review, discussion and balance and thinks this would be another layer that is not necessary and should not be in the charter. Commissioner Mikulina stated recently Castle and Cooke was part of the process to amend the sustainable community plan for Central Oahu and asked Mr. Ching if that was right? Mr. Ching responded some time ago. Commissioner Mikulina then stated in 2002 and they moved for urban growth boundaries in contemplation of one of their projects and if he knew how the City Council voted. Mr. Ching responded it was a portion of their master plan project and was not with the company at the time but clarified they went through that process as well.

Alexander Joseph Fadrowsky testified in opposition to Proposals 21, 47 and 69. He highlighted his written testimony.

William Reese Liggett testified in support of open spaces. He went on to say people who oppose urban growth boundaries don't want their land preserved and to follow the money. He stated their conflict of interest is blatant. Mr. Liggett stated the preservation of open space is important to the environment and our economy. He went on to say maybe not the individual economy of the landowners but certainly the bigger economy of the island. He asked the Commission to discount their testimonies against urban growth boundaries because of the blatant conflict of interest. Mr. Liggett stated urban growth boundaries belong in the charter because it's not working in the plan. He went on to say it's too easy to get 51% of the votes and it's too easy to make money inexorably. He stated housing can fit in urban growth boundaries he commented the what the clan really wants is development of their land that are outside the urban growth boundaries so they

can make money but feels they should not be making money at the expense of the environment and because the open spaces are outside of the plan.

ACTION:

Commissioner Lendio moved to approve Proposal 21. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Sullivan stated she proposed the revised language but would not be voting in support of the proposal. She stated she viewed this proposal similar to what they went through when they discussed EMS or the Fire Department where the discussion there was codifying a reflection of what those departments are actually doing or have been doing. She went on to say as the director has verified the language that was proposed is what the department has been doing for some time. Commissioner Sullivan stated she also did that at that time because the department did support the concept for both Proposal 21 and 47 and thought this would be reflecting something the department wanted to be reflected as a function they have been doing. She went on to say now that the department says they do not support the proposal, she commented she doesn't feel it's her place to say that it should be reflected. Commissioner Sullivan stated whether they continue to do the current system that would be the department's challenge on how to conduct business in the future but respects the department's position and because they do not support, she would not be voting for the amendment she proposed.

Commissioner Meder stated the Commissioners are not drawing lines around the island and stating what the boundaries should be but he is interested in putting that idea before the voting public. He went on to say there are boundaries in the development lands and they are up for review every 5 years and have the potential of moving according to certain influences. Commissioner Meder commented this is instead a statement by the people of Honolulu to say in principle that they believe that they should put some edge to those values and they are identifying those open spaces are meaningful as a value, as a community, as a city. He went on to say those open spaces that have value are to be kept for the future. Commissioner Meder commented Mr. Uchida's point was very well made regarding the city has problems with it's current infrastructure. Commissioner Meder goes on to say instead of putting more cost farther and farther out he thinks they should look at ways they could include some resources to improve what they have before it gets worse and allow people in the future to have that open space and hopefully some affordable housing within the urban core and developed areas. Commissioner Meder hopes the Commission could put this in as part of their legacy for the future.

Commissioner Grau stated there is a natural growth boundary which is the Pacific Ocean and the rate of the development of the island it's not going to be very long that there would not be any open spaces. He went on to say the question is not whether urban growth boundaries are immutable but saying they are to establish them and to think hard before they move them and would require a 2/3rds vote to move it. He commented it's sometimes argued that it should not be part of the charter but it's part of the charter in other places and if people of Oahu decide it should be part of the charter then they should have their chance to express that. Commissioner Grau stated he would be voting in favor of the urban growth boundaries.

Commissioner Mikulina echoed Commissioner Grau and clarified Proposal 21 is for the urban growth boundaries and not the 2/3rds vote. He stated he sees this proposal as a fairly minor which would do nothing to change the status quo but would place it in the charter the urban growth boundaries, which is currently in practice through the sustainable communities plan. He went on to say the most recent change was in 2002 in Central Oahu went before the City Council, they did have some support from a developer in Central Oahu and it was unanimous to change the urban growth boundaries to accommodate their proposed development. Commissioner Mikulina commented he hardly sees this a speed bump but it does put a line on the map saying they are going to focus growth in the already urbanized areas unless they absolutely need to, then they would move the boundaries. He stated they are thousands of acres of undeveloped lands that have been urbanized from Iwilei to Ewa to Central Oahu and for taxpayer's sake and environment sake that is where they should be focusing growth and if they need to they can move the line. He commented he thinks Proposal 47 is a more important amendment because it does elevate the 2/3rds vote but this proposal is codifying the status quo.

Commissioner Pacopac stated he is opposed to this proposal as well as the entire land use proposals. He went on to say the land use process that they have gone through for so many years is a complex process and to put something of this sort on the ballot without an explanation on how the land use process works he feels it's not right for the public. He stated there have been many experts, many people have been involved with the land use and feels these types of proposals which is very complex should be put at the level where the Council and the Administration to have the public come out and voice their opinions on land use issues. He feels that's the better process in making sure both sides are heard. Commissioner Pacopac commented the proposals are very vague and to go on the ballot he doesn't think it serves the public any justice.

Commissioner Coffee echoes Commissioner Pacopac. He went on to say once they draw a line on a map it's almost a conclusion that a single issue advocates would bring upon legal challenges and prolong the approval process and more money on litigation. He stated they saw the system work with Kamilonui valley informally and formally. The residents signed petitions, the City Council supported the farming community there and it worked and there are already mechanisms to achieve what the proposal is trying to do. Commissioner Coffee stated his last concern is an issue they seldom think of and they try to make each proposal stand on it's on regardless of how many would be on the ballot. As Mr. Fadrosky said about the more issues they have the less interest there is going to be and fewer people are going to vote on the issues.

AYES: GRAU, MEDER, MIKULINA - 3
NOES: TAKAKI, CHANG, COFFEE, HIRANO, KAWASHIMA, LENDIO, MYERS,
PACOPAC, SULLIVAN, TOM - 10

MOTION FAILED.

PROPOSAL 22 - Planning Commission; Restore the position of Executive Secretary.

The following individuals testified:

1. Henry Eng, Director, Department of Planning and Permitting
2. Charles Prentiss

Written testimony:

1. Barbara Marshall, Councilmember, Honolulu City Council
2. Chuck Prentiss
3. Henry Eng, Director, Department of Planning an Permitting

Henry Eng testified in opposition. He read his written testimony into the record. Commissioner Mikulina stated on December 13 Mr. Eng testified in support of the amendment and said there are situations where the Planning Commission and the department have different views, and where the commission is in position to have to develop findings that are contrary to the department's position and felt that the Executive Secretary would give the Planning Commission independence and asked what has transpired over the past 4 months that now they think this is something that is unnecessary? Mr. Eng responded it's a matter of cost. Mr. Eng responded yes and stated their testimony indicated their support on the purpose and intent, it's just the cost. Commissioner Mikulina clarified it was just the cost.

Commissioner Chang stated he remembers the discussion held in the annex on which he disagreed with Mr. Eng's position at that time. He went on to say as he understood the Planning Commission's functions as a citizen body was to advise the department, Mayor and the City Council and if it is going to be advisory to the Planning Department he thinks it's appropriate that the Planning Department provide the necessary staffing support. Commissioner Chang clarified that was his view at that meeting and it was his view 20 or more years ago. Commissioner Chang asked Mr. Eng if he still sees the Planning Commission as appropriately being supported by the staff of the department? Mr. Eng responded they are presently doing that.

Charles Prentiss testified in support. He read his written testimony into the record. Commissioner Sullivan asked Mr. Prentiss how many years has the Planning Commission been without an Executive Secretary? Mr. Prentiss responded since 1994. Commissioner Sullivan stated the Commission has a procedure where they adopt the findings of fact. The department prepares the findings of fact, conclusions of law and the Commission adopts it on its own. Commissioner Sullivan asked Mr. Prentiss doesn't the Commission has the ability if they find a conflict to make other arrangements in cases where issues are erroneously before them. Mr. Prentiss responded the Commission does not have the ability to write them, the department writes them. Commissioner Sullivan commented she understood that that is a staff function and asked Mr. Prentiss couldn't the Commission reject it if there was some conflict and not properly reflecting their actions? Mr. Prentiss responded yes. Commissioner Sullivan asked if he was aware of any problems where there has been a conflict and the Planning Commission felt they were not properly staffed by the department? Mr. Prentiss responded he hasn't followed the specific recommendations that closely recently. He stated he wanted to emphasize that there is at least a perception of conflict when a department would be writing the findings and some of the recommendations for the Commission.

Commissioner Sullivan stated her point is the Commission has the ability to reject it if they want to. Mr. Prentiss responded he would give Commissioner Sullivan that point.

Commissioner Chang stated there are a number of other Commission bodies that serve the advisory function to other departments and asked if Mr. Prentiss knew if there was any other Commission in the City government where they have a separate secretary or an Executive Secretary to staff that body? Mr. Prentiss responded the one that stands out is the Neighborhood Commission has a full time Executive Secretary. Mr. Prentiss went on to say they have to understand the functions that the Planning Commission has to make comments and hold public hearings on general plans, development plans, sustainable communities plans, zoning, contested case hearings and procedures they have to follow. He went on to say their function needs to be aided so they have their own professional assistance. He stated we are the 12th largest city in the nation and the Planning Commission doesn't have any professional help and with the development pressures we have on the island he feels they need this.

ACTION:

Commissioner Lendio moved to approve Proposal 22. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Mikulina stated he would be supporting the proposal to provide the independence to the Planning Commission because there have been situations where the Planning Commission's position differs from the departments.

AYES: COFFEE, GRAU, MEDER, MIKULINA, MYERS - 5
NOES: TAKAKI, CHANG, HIRANO, KAWASHIMA, LENDIO, PACOPAC,
SULLIVAN, TOM - 8

MOTION FAILED.

PROPOSAL 32 - Planning Commission; Establish deadlines for Mayor and City Council to act on certain Planning Commission recommendations.

The following individuals testified:

1. Dean Uchida, Executive Director, LURF
2. Mike Kido, External Affairs, The Pacific Resource Partnership
3. Carlton Ching, Castle and Cooke Hawaii

Written testimony:

1. Barbara Marshall, Councilmember, Honolulu City Council
2. Dean Uchida, Executive Director, LURF
3. Jim Tollefson, President, Chamber of Commerce of Hawaii
4. Kyle Chock, Executive Director, The Pacific Resource Partnership
5. Richard Mirikitani, Senior Vice President and Corporate Counsel, Castle & Cooke Hawaii
6. Hawaii Carpenters Union
7. Henry Eng, Director, Department of Planning and Permitting

Dean Uchida testified in opposition. He stated their concern is about the process that's being discussed. He commented as they understand it the Planning Commission is basically making recommendations to the Council and the Administration. He went on to say the proposal seems to shift that role from one of advisory to making policy forcing the administration to make a decision and submit something to Council. Mr. Uchida commented if the intent was to truly expedite the review, they felt more appropriate language would be to have the administration comment in a timely basis. He went on to say the way it's worded currently it elevates the Planning Commission's role to a policy making level as opposed to advisory.

Mike Kido testified in opposition. He stated although they support the intent to the amendment to expedite the review process they oppose the amendment that's proposed and asked that it not be placed on the ballot. Commissioner Mikulina asked for clarification and asked Mr. Kido if they are not concerned about the timeline? Mr. Kido responded they are aware of that time cost and money but it also has a procedural change incorporated in the proposal. Commissioner Mikulina clarified it's the procedural change is their objection? Mr. Kido responded yes.

Carlton Ching testified in opposition. He stated they are opposed to the Planning Commission which is a voluntary appointed advisory group being elevated to policy making.

Jim Tollefson testified in opposition. He stated the also would like to speed up the timeline but they are concerned about elevating the role of the Planning Commission to policy making which they do not believe is necessary. He commented he stands on his written testimony.

Henry Eng testified in opposition. He stated they have attached their testimony of December 7, 2005. He went on to read his written testimony into the record.

ACTION:

Commissioner Lendio moved to approve Proposal 32. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Mikulina stated he would voting against the proposal and doesn't think it's necessary.

AYES: NONE - 0

NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER, MIKULINA, MYERS, PACOPAC, SULLIVAN, TOM - 13

MOTION FAILED.

Chair Takaki asked to take a 10-minute recess. Commissioner Lendio moved to recess. Commissioner Myers seconded that motion.

***RECESS – 8:10p.m.

***RECONVENE – 8:17p.m.

PROPOSAL 47 – Planning and Zoning; Establish urban growth boundaries.

The following individuals testified:

1. Dean Uchida, Executive Director, LURF
2. Mike Kido, External Affairs, The Pacific Resource Partnership
3. William Reese-Liggett
4. Alice Fisher
5. Henry Eng, Director, Department of Planning and Permitting
6. Gary Okino, Councilmember, Honolulu City Council
7. Elizabeth Riley, President, Livable Hawaii Kai Hui
8. Thomas Yamabe
9. A. Joseph Fadrowsky
10. Steve Hoag, Director of Human Resources and Government Relations, Hawaii Reserves, Inc.
11. Tosh Hosoda, Sr. Vice President – Planning, The Gentry Companies
12. Carlton Ching, Castle and Cooke Hawaii
13. Tai Hong
14. William “Buzz” Hong, Executive Director, Hawaii Building and Construction Trades Council
15. Jim Tollefson, President, Chamber of Commerce of Hawaii
16. Lance Tanaka, Vice President and Manager of Government Affairs, Bank of Hawaii

Written testimony:

1. Jeannine Johnson, Legislative Sub-Committee Chair, Kuli’ou’ou/Kalani Iki Neighborhood Board
2. Charles Prentiss
3. Paul Oshiro, Manager – Government Relations, Alexander and Baldwin Inc.
4. Miles T. Nishijima, Assistance Vice President/Asset Management, Kaneohe Ranch Management
5. Donovan Dela Cruz, Council Chair, Honolulu City Council
6. William Reese Liggett
7. Barbara Marshall, Council Chair, Honolulu City Council
8. Don White, President, Earth Trust
9. Sue White, President, Greenpeace Foundation
10. Thomas Yamabe
11. William “Buzz” Hong, Executive Director, Hawaii Building and Construction Trades Council
12. Dean Uchida, Executive Director, LURF
13. Alan Shintani, President, BIA-Hawaii
14. R. Eric Beaver, President and CEO, Hawaii Reserves, Inc.
15. Steve Hoag, Director of Human Resources and Government Relations, Hawaii Reserves, Inc.
16. Eric Shumway, President, BYU-Hawaii
17. Jim Tollefson, President, Chamber of Commerce of Hawaii
18. Paul Schwind
19. Kyle Chock, Executive Director, The Pacific Resource Partnership

20. Carl Takamura, Hawaii Business Roundtable
21. Richard Mirikitani, Senior Vice President and Corporate Counsel, Castle and Cooke Hawaii
22. Tosh Hosoda, Sr. Vice President – Planning, The Gentry Companies
23. Craig Watase, President, Mark Development, Inc.
24. A. Joseph Fadrowsky, III
25. Von D. Orgill, President & CEO, Polynesian Cultural Center
26. Ronald G. Nishihara, Project Manager, Castle & Cooke Hawaii
27. Hawaii Carpenters Union
28. Lance Tanaka, Vice President and Manager Government Affairs

Dean Uchida testified in opposition and stated he stands on their written testimony.

Mike Kido testified in opposition and stated he stands on his written testimony.

William Reese Liggett testified in support and stated he stands on his written testimony.

Alice Fisher testified in support. She stated she thinks it's a very economical idea to have boundaries so they build in and up, spend less money on sewers and water supply mechanisms.

Henry Eng testified in opposition and stood on written testimony for Proposals 21 and 47 submitted today. Chair Takaki asked for clarification that there are 8 sustainable community plans? Mr. Eng responded there are 8 areas that are encumbered by development plans. Chair Takaki then asked if all 8 plans currently have urban growth boundaries? Mr. Eng responded the development plans do and believes the others have rural growth boundaries but they serve the same purpose. Chair Takaki went on to ask if the 8 plans are they required updating every 5 years? Mr. Eng responded that is correct. Chair Takaki asked if they have all been updated? Mr. Eng responded they haven't been updated and the Department is behind schedule. Chair Takaki asked Mr. Eng without updating the entire plan, can they update the urban growth boundary or the rural boundary within the plan without updating the entire plan. Mr. Eng responded he's not certain of that and in the years that all of the plans have been developed he's not sure if they have received any applications to amend that and clarified he's only been with the department for a year and a half. Chair Takaki followed up on Mr. Yamabe's testimony earlier, Hawaii Kai for example. Chair Takaki asked Mr. Eng if he knew if the Hawaii Kai plan was last updated? Mr. Eng responded it has not been updated and they are still working with the original edition. Chair Takaki asked if were more than 5 years old? Mr. Eng responded it was close to 5 years. Chair Takaki clarified within that time the urban growth boundaries within that plan have not been changed. Mr. Eng responded yes, it has not been changed.

Commissioner Chang stated his concern is the ability of the city to respond to the necessary infrastructure in order to accommodate growth. He stated many years ago when DPP was first adopted into the charter, the purpose as he understood it then was to serve as the guidepost for Council action in making planning and appropriations for CIP projects and asked if that was still the fundamental principle? Mr. Eng responded it still is the guide. Commissioner Chang then asked within the current structure of city government, they still plan for whether it's urban growth boundaries or whatever in the

DPP's, that's what the use to determine how the city is to allocate it's resources on CIP projects? Mr. Eng responded yes to the extent that resources are available and noted they have had to divert some of their resources to take care some of the city's basic services.

Councilmember Okino testified in support. He commented this is an important issue that the Commission has before them in terms of the way the city manages growth on Oahu. He went on to say growth management is probably one of the most important functions of city government. He stated the island is very limited because it is an island and land space cannot be wasted and they need to preserve as much open space as they can. Councilmember Okino stated growth boundaries are critical to allowing them to happen and clarified they are not asking for an immutable boundary, something that would impact affordable housing or cost of housing but when they are pressured on these factors then changes would be considered. He clarified they are asking for a little bit of difficulty of moving the boundaries so there can be a serious due diligence process in looking at the entire island as to where they are going to expand those boundaries. He stated since he stated working for the City in 1967, they have been fighting the planning by landowners, planning by developers and no matter what they try they don't have the entitlements or tools to force a due diligence process that would make them look at the entire island and do what makes sense. He went on to say in the planning profession there is one disease that they all want to avoid called urban sprawl. Councilmember Okino stated studies have shown urban sprawl costs money, urban sprawl costs quality of life. He went on to say something needs to be done to deal with that problem. He stated they have urban growth boundaries and the intent was to make it strong but during the DPP adoption process that was compromised. Councilmember clarified he is not asking for something inappropriate for the charter but the entitlement to do an ordinance to do a growth boundary but the 2/3rds vote which is critical to this. He stated they can adopt an ordinance that requires a 2/3rds vote but they can also repeal an ordinance with 5 votes and feels a supermajority vote by ordinance doesn't make sense. He went on to say in his opinion this is a critical issue because the Commission would basically define one of the major functions the city has. Commissioner Sullivan asked Councilmember Okino prior to the current system of the development plan there was a process called annual review process where every year the development plans would get amended and understands that that was not a good thing for long range planning which in a way it was a forward moving thing where development plans were changed to be reviewed every 5 years. She asked Councilmember Okino from the standpoint of wanting to keep the longer range planning process, isn't that be preferable to keep what the city has been doing instead of trying to establish another procedure of going back to an annual review process where they would establish a new process where they can amend it at any time? Councilmember Okino responded from his understanding is it currently could be amended at any time. He went on to say when they went through the adoption of the current development plans, language was taken out of the development plans to a point where the legal community said it is entirely possible to amend it at anytime. Commissioner Sullivan committed that has not necessarily happened, does it? Councilmember Okino responded it hasn't happened, but he thinks before that happens they need to put a stronger requirement on this boundary.

Commissioner Chang asked Councilmember Okino about a month or so ago Professor Callies of the Richardson School of Law wrote an article in the paper and asked if he

recalled some of the specifics that he would like to comment on Professor Callies article because he had objected the proposal? Councilmember Okino responded he thinks Mr. Callies was under a misunderstanding, they are not adopting urban growth boundaries in the charter but entitling the Planning Department to develop those ordinances and they are basically putting in the 2/3rds vote and are establishing urban growth boundaries just as they are establishing the general plan, the development plan, zoning. He stated they don't adopt an ordinance for zoning to own a property and that is not what he is asking for and agrees with Professor Callies' argument but he just doesn't have the right facts.

Chair Takaki asked Councilmember Okino as Director Eng said there are already urban growth or rural growth boundaries within the 8 community plans and asked if he knew when was the last time any of the urban growth boundaries were changed? Chair Takaki clarified Commissioner Mikulina referred to 2002 and asked if of the other 7 plans that had their urban growth boundaries changed in the last 4 years? Councilmember Okino responded he doesn't think there were any changes. Chair Takaki commented this doesn't occur very often? Councilmember Okino responded it shouldn't occur very often, it should at that five year break but it should be based on a process where they consider whether it needs to be expanded or not. He went on to say, what he's hoping for is not only to establish this requirement but also ask the Planning Department to establish criteria to say when and where to consider expansion of the boundaries. He commented if there's pressure in the urban area and the land and housing and the pricing is going up because of the lack of supply then he thinks it's incumbent on the city to initiate expansion of the boundaries. Councilmember Okino stated it's a prudent way to give the city a tool to better manage growth on the island and feels its critical because they are running out of land and resources.

Commissioner Coffee asked Councilmember Okino how would he respond to his earlier statement regarding the City Council itself has the power to require a two-thirds and to appeal a two-thirds vote. Commissioner Coffee stated it suggests a great deal of flexibility depending upon the needs at the time but also suggests a great deal of accountability because everyone would know who voted for the two thirds and who voted for the repeal of the two-thirds and feels those are desirable ends.

Councilmember Okino responded you could tell where the pressure that are going on today and votes don't always mean they are the right thing to do. He went on to say the Commission has a chance as a non-elected body to put some responsibility in the process of expanding growth boundaries.

Commissioner Mikulina asked Councilmember Okino if he agreed that the development plan with the help of the landowners, the community, farmers could come to some sort of consensus or near consensus upon what the development plan and area should look like and then the City Council acts on it? Councilmember Okino responded in the affirmative. Commissioner Mikulina clarified that would be the 5-year review process? Councilmember Okino responded in the affirmative. Commissioner Mikulina then asked Councilmember Okino most of the time the Council would respond to what the community wants or what the consensus was reached if he found that to be true but would require a two-thirds vote? Councilmember Okino responded in the affirmative.

Elizabeth Riley testified in support. She stated she is president of a non-profit group in Hawaii Kai that is a non-profit grassroots group formed 2 years ago. Their group's

primary function is to uphold the integrity of the East Honolulu Sustainable Community Plan. The Hawaii Kai Neighborhood Board twice drafted resolutions to attest to the fact that they want to keep their urban growth boundaries as per the sustainable plan. She went on to say the landowner with the developer is trying really hard to make it difficult for the farmers via lease rent to have them not afford to stay. Ms. Riley stated a sustainable plan can be amended while it's under review and she has a copy from the Department of Planning and Permitting. She stated it comes up every few months at their neighborhood board. She went on to say a simple letter can be written to the Department of Planning and Permitting asking for an amendment and if DPP says no, they could lobby the City Council. Ms. Riley commented it's not exclusive to Hawaii Kai, she is also working with people at Paiko Ridge and Kuliouou area where urban growth boundary is being challenged. She went on to say land at the State level is conservation but someone owns it. She commented they ran an ad in the national paper selling homes outside the urban growth boundaries, lands that are conservation despite the fact that they went to DPP and were told about the Sustainable Plan and the urban growth boundaries. Chair Takaki asked Ms. Riley there are proponents and opponents of Proposal 47 and stated there are already urban growth boundaries, how would the proposal have stopped a mainland developer from putting ads in the paper? Ms. Riley responded Proposal 47 she believes holds people accountable in the implementation of it. She is in favor of the two-thirds vote. She feels the current three-tier level is not working. She stated the concept of the sustainable plan is good but it needs guidelines.

Thomas Yamabe testified in support and remained the same as in Proposal 21.

Alexander Fadrowsky testified in opposition and stands on his written testimony. He clarified all of Gentry's lands are within the urban growth boundaries. As far as it being an easy process, their Waiawa planned community entitlement process, which is adjacent to the primary urban center, took over 14 years. He went on to say he has not plans to go through another one of these in his career. Mr. Fadrowsky commented as far as availability of land, he thinks it was not the only factor but a very significant factor in the moderation of housing process from 1992 – 2002. There was a 10 year period of time where the affordability index and the supply and demand situation was reasonable but are not there now which he wanted to add as another factor as part of his early concerns about the economic impact of these proposals. Commissioner Mikulina asked Mr. Fadrowsky for clarification, 14 years for Waiawa? Mr. Fadrowsky responded in the affirmative. Commissioner Mikulina stated currently there is a 365-day automatic approval deadline for the Land Use Commission and then there's a 60-day approval for the Planning Commission. Commissioner Mikulina asked Mr. Fadrowsky how could something take 14 years with those two deadlines in place? Mr. Fadrowsky responded they are routinely asked to waive a deadline and what are they going to do, tell the people "no" when the alternative is to be turned down? He went on to say that the planning started in 1984 and received Land Use Commission approval around 1990 and their first zoning approval was in 1998.

Steve Hoag stated he stands on his prior written and oral testimony.

Tosh Hosoda testified in opposition to Proposals 21, 47, 69 and 99 based on the fact they don't think these are the type of things that should be included in the Charter. He went on to say he understands why the two-thirds vote is being suggested in the

proposal but to single out anything that has to do with rural or agricultural land to urban under the two-thirds vote process he feels is not the right thing to do because that's putting one type of thing over some of the other important objectives that the city has. Mr. Hosoda commented that preserving open space is important but doesn't think any more important than affordable housing or economic development and are they going to be up for a two-thirds vote as well. He went on to say he doesn't think they Commission would want to open that possibility at this point and ask the Commission to not support the proposal. Commissioner Chang commented the point Mr. Hosoda has made regarding the two-thirds vote has troubled Commissioner Chang. Commissioner Chang asked Mr. Hosoda if he knew of any other provision in the charter that required a two-thirds vote? Mr. Hosoda responded he did not know. Commissioner Chang asked Corporation Counsel the same question. Deputy Corporation Counsel Lori Sunakoda responded she believes to amend a zoning ordinance, it requires a two-thirds vote. She stated the two-thirds majority vote is typically reserved for extraordinary situations that are explicitly set out in the charter and other in the absence of that type of provision set out in the charter, it's presumed that any other action would require a simple majority. Mr. Hosoda stated he knows if a bill goes through the Planning Commission and it's recommended for denial, he believes for it to pass at the City Council a two-thirds vote is required. He commented he doesn't know if it because of the charter.

Commissioner Meder asked Corporation Counsel to clarify currently what requires a two-thirds vote? Deputy Corporation Counsel Sunakoda responded she is researching the specific provision. Chair Takaki asked to take the next testifier.

Carlton Ching testified they stand on their written testimony in opposition.

Tai Hong testified in support. He commented he thinks there was a change in their urban growth boundaries in the 1999 East Oahu Community Sustainable Plans was adopted sometime in 1999. He stated he spoke to Councilman Holmes' staff and asked why did Councilman Holmes vote against the change of the urban growth boundaries, which is on Leolani at the end of Hawaii Kai Drive. Mr. Hong stated the developer cut into the mountain and created an eyesore and the vegetation would not grow. Councilman Holmes told Mr. Hong that the Council just accepted the Sustainable Plan and now they are changing the boundaries. Mr. Hong would go back to do research to clarify his testimony. Chair Takaki clarified with Mr. Hong if this proposal was to pass that event would not have changed and the vote was 7 to 2 and that event still would have passed even with the two-thirds requirement. Mr. Hong stated it might make a difference now because they went through Councilman Djou who created Resolution 04-198 to maintain the urban growth boundaries as it is right now. He goes on to say the only person that did not vote on it was Councilman Todd Apo. He stated he and Ms. Riley met with Councilman Apo to ask what his position was but Councilman Apo did not state his position.

William Buzzy Hong testified in opposition. Mr. Hong gave a background history of the past with open space area. The open space area was deteriorating and has been cleaned up and developed and has improved over the years.

Jim Tollefson testified in opposition and stands on his written testimony.

Lance Tanaka testified on behalf of Bank of Hawaii and stated they stand on their written testimony.

ACTION:

Commissioner Lendio moved to approve Proposal 47. Commissioner Myers seconded that motion. Discussion followed.

Deputy Corporation Counsel Sunakoda found the provision in the charter to answer Commissioner Meder earlier question. Deputy Corporation Counsel Sunakoda stated with the assistance of Researcher Nikki Love, they confirmed that the following sections specifically set forth in the charter contain existing provision that require two-thirds vote. Section 3-203 requires a two-thirds vote of the City Council in order for Council to override the Mayor's veto of a bill, secondly Section 3-202 Subsection 10 requires a two-thirds vote in order for the City Council to declare an emergency in order to authorize the Council's waiver of procedural requirements relating to passages of ordinances and resolutions, thirdly Section 3-107 Subsection 4 requires a two-thirds vote in order for Council to take disciplinary action against a Councilmember for misconduct, and specifically Section 3-116 requires a two-thirds vote in order to enable Council to authorize the expenditure of general obligation fund. She went on to say she previously mentioned relates to a two-thirds vote required pursuant to Section 6-1513 in which would enable Council to initiate any type of Council amendments and/or revisions to existing zoning ordinances and the final example is found in Section 3-122 which requires not a two-thirds but at three-fourths vote requirement in order to enable Council to reject a Salary Commission proposal. Commissioner Meder thanked Deputy Corporation Counsel Sunakoda for the research.

Commissioner Lendio added Section 6-1511 Subsection 2 Adoption of General Plan and Development Plan. Deputy Corporation Counsel Sunakoda affirmed that would be another two-thirds vote. Deputy Corporation Counsel Sunakoda stated the point is there are very specifically enumerated exceptions to the simple majority requirement that are set forth in the Charter.

Commissioner Mikulina stated he thinks this proposal is one of the important proposals they are considering. He went on to say the Council tried to effectuate through ordinance in 2003 and Corporation Counsel advised that it might be better done through the Charter because of the two-thirds vote question and make it absurd that the Council at anytime could waive the two-thirds vote and just do a simple majority and then revert to it. Commissioner Mikulina commented this proposal is adding one more vote to the moving of an urban growth boundaries. He went on to say he think this proposed amendment gets back to smart and responsible planning and puts a process in place where the community gets together every five years and sit down with all stakeholders to come up with a sustainable community plan, go before DPP and then the Council to get it approved. This proposal would add one more vote to make sure they are doing the right thing because these plans are permanent in essence as soon as they start to develop the urban growth boundaries.

Commissioner Sullivan asked Mr. Eng if this proposal was to be placed on the ballot and approved by the voters, it would be sent to him as the director to establish and

administer and asked how would he implement this proposal? Mr. Eng responded their testimony is that there are boundaries and procedures now existing for this amendment and feels it isn't necessary to adopt this proposal. Commissioner Sullivan then asked Mr. Eng if this proposal was to be adopted does he know if it would be the same or different? Mr. Eng responded he doesn't know.

AYES: TAKAKI, GRAU, MEDER, MIKULINA, MYERS - 5
NOES: CHANG, COFFEE, HIRANO, KAWASHIMA, LENDIO, PACOPAC,
SULLIVAN, TOM - 8

MOTION FAILED.

PROPOSAL 69 - Planning and Zoning; Require 2/3rds vote for Planning Commission and City Council before non-urban land can be converted to urban use.

The following individuals testified:

1. Dean Uchida, Executive Director, LURF
2. Mike Kido, External Affairs, The Pacific Resource Partnership
3. William Reese Liggett
4. Thomas Yamabe
5. Jim Tollefson, President, Chamber of Commerce of Hawaii
6. Tai Hong
7. Henry Eng, Director, Department of Planning and Permitting
8. Carlton Ching, Castle and Cooke Hawaii
9. Steve Hoag, Director of Human Resources and Government Relations, Hawaii Reserves, Inc.
10. A. Joseph Fadrowsky, III
11. Marjorie Ziegler, Executive Director, Conservation Council of Hawaii
12. Elizabeth Riley, President, Livable Hawaii Kai Hui
13. Lance Tanaka, Vice President and Manager of Government Affairs, Bank of Hawaii

Written testimony:

1. Richard Poirier, Chair, Mililani/Waipio/Melemau Neighborhood Board
2. Paul Oshiro, Manager – Government Relations, Alexander & Baldwin, Inc.
3. William Reese Liggett
4. Fancine Margulies
5. Ronald G. Nishihara, Project Manager, Castle & Cooke Hawaii
6. Marjorie Ziegler, Executive Director, Conservation Council of Hawaii
7. Nara Takakawa
8. Mark & Karen Kimbrell
9. Thomas Yamabe
10. William "Buzz" Hong, Executive Director, Hawaii Building and Construction Trades Council
11. Dean Uchida, Executive Director, LURF
12. Alan Shintani, President, BIA-Hawaii
13. R. Eric Beaver, President and CEO, Hawaii Reserves, Inc.
14. Steve Hoag, Director of Human Resources and Government Relations, Hawaii Reserves, Inc.
15. Eric Shumway, President, BYU – Hawaii
16. Jim Tollefson, President, Chamber of Commerce of Hawaii

17. Kyle Chock, Executive Director, The Pacific Resource Partnership
18. Richard Mirikitani, Senior Vice President and Corporate Counsel, Castle & Cooke Hawaii
19. Tosh Hosoda, Sr. Vice President – Planning, The Gentry Companies
20. Craig Watase, President, Mark Development, Inc.
21. Von D. Orgill, President & CEO, Polynesian Cultural Center
22. Hawaii Carpenters Union
23. Don White, President, Earth Trust
24. Sue White, President, Greenpeace Foundation
25. Lance Tanaka, Vice President and Manager of Government Affairs, Bank of Hawaii
26. Henry Eng, Director, Department of Planning and Permitting
27. Annette Kaohelauii
28. Elizabeth McDermott

Dean Uchida testified he stands on his written testimony in opposition.

Mike Kido testified he stands on his written testimony in opposition.

William Reese Liggett testified in support. He read his written testimony into the record.

Thomas Yamabe testified in support. He stated the boundaries exist now but the developers and the landowners have proceeded to violate that boundaries and they would go to the City Council and request for their permission to change the boundaries or if that 's not possible, they'll find ways to do it. It has happened in Kamilonui Valley.

Jim Tollefson stated he stands on his written testimony in opposition.

Tai Hong testified in support because it provides a higher level of protection for Hawaii Farm land.

Henry Eng testified they stand on their written testimony in opposition.

Carlton Ching testified they stand on their written testimony in opposition.

Steve Hoag testified they stand on their written testimony in opposition.

Alexander Fadrowsky testified he stands on his previous testimony in opposition.

Marjorie Ziegler testified in support. She read her written testimony into the record.

Elizabeth Riley testified in support. She stated at the very least if the Commission could hold the City Council accountable and have them think a little more before they do zone changes. The proposal is asking for a two-thirds vote and asked the Commission to consider passing this proposal.

Lance Tanaka testified Bank of Hawaii stands on their written testimony in opposition.

ACTION:

Commissioner Lendio moved to approve Proposal 69. Commissioner Meder seconded that motion. Discussion followed.

Chair Takaki asked Corporation Counsel Proposal 69 seems to impact the same area of the charter that Proposal 99 does and do they see any conflict between the two proposals if both were to pass? Deputy Corporation Counsel Sunakoda responded they have questions with respect to what is the meaning of non-urban in that particular category. She went on to say with respect to the consistency, the Commission should be aware that any action on Proposal 69 should be consistent with any action taken with regard to Proposal 99.

Commissioner Mikulina stated it makes sense to have a two-thirds vote, most of these things happen that way as they are and he thinks it's important to add a level of scrutiny because typically these are one-way zone changes and rarely do they go in the other direction.

Commissioner Meder stated the proposed amendment are decisions that are irreversible and feels one more vote in the City Council is not something that is difficult for the Commissioners to imagine being right to do. He commented he hopes the other Commissioners support this proposal.

AYES: GRAU, MEDER, MIKULINA, MYERS - 4
NOES: TAKAKI, CHANG, COFFEE, HIRANO, KAWASHIMA, LENDIO,
PACOPAC, SULLIVAN, TOM – 9

MOTION FAILED.

**** PROPOSAL 71** - Department of Environmental Services; Comprehensive curbside recycling program.

The following individuals testified:

1. Shannon Wood, President, Ahupuaa Alliance
2. Eric Takamura, Director, Department of Environmental Services
3. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
4. William Reese Liggett

Written testimony:

1. Donovan Dela Cruz, Council Chair, Honolulu City Council
2. Alan T. Murakami, Litigation Director, Native Hawaiian Legal Corporation
3. William Reese Liggett
4. Maren Calvert
5. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
6. Nara Takakawa
7. Jeff Glover
8. Noah Pomeroy
9. Sue White, President, Greenpeace Foundation
10. Chirs Colgrove

11. Eric Takamura, Director, Department of Environmental Services

Shannon Wood testified in support. She stated because the charter is a statement of guiding principle, which should be upheld by the mayor and the City Council, there are some issues that need to be protected from the vagueness of political expediency.

Eric Takamura testified in opposition because they feel it's redundant and unnecessary because the City Council passed Bill 72 (2005), CD2, FD1 and Mayor Hannemann signed it into law to become an ordinance. He went on to say part of the responsibility is to make it financially feasible and not randomly put in programs that the taxpayers would ultimately have to pay out of their pockets. Commissioner Mikulina stated it's been a couple of months since the Mayor signed the bill into law and asked Mr. Takamura what steps has he taken since that time to start that program? Mr. Takamura responded they are going to roll out green waste and they are going to take one year to analyze what happens out from Mililani to Waimanalo with the blue bins. He went on to say some residents in certain areas such as Kahaluu and Enchanted Lakes that generate more green waste than the average household and are trying to make revisions to those two neighborhoods. Mr. Takamura stated otherwise they are trying to see how they can promote increase participation and think they are averaging less than the Mililani pilot program saw in the 6 months they conducted their program. He stated they are in the process of trying to get more individuals attuned to in terms of what they are trying to do with the recycling program. Commissioner Mikulina asked Mr. Takamura if there has been any progress made on the mixed recyclables? Mr. Takamura responded he thinks Councilmember Djou tried to put money in the FY07 budget to expand the recycling program and thinks it's going through a process to see if they can fund the program. Commissioner Mikulina asked Mr. Takamura if the money is there would they move forward? Mr. Takamura responded yes.

Marjorie Ziegler testified in support. She stated their concern is from the wildlife interest perspective and are concerned about fatal impact on marine debris on sea birds, sea turtles and monk seals. She went on to say most people are aware of the sea turtle entanglement, the monk seal entanglement in fishnets and other debris but less is known on marine debris on the sea birds. She used the example of the albatross, seabirds mistake plastic items floating on the ocean for food and feed their young who sometimes die of starvation with a stomach full of plastic. She went on to say not all materials are recyclable at this time but as technology increases, she thinks they will be more recyclable materials. Ms. Ziegler commented they are also concerned about things that are over packaged or things that are disposable. She stated she hopes the Commissioners support this proposal. Chair Takaki asked Ms. Ziegler, given that there's already an ordinance to start recycling in 2007, why does she feel it's still necessary to amend the charter as well to address recycling? Ms. Ziegler responded she's not familiar with City politics because she focuses on the State and Congressional level but feels the charter is an important venue for citizens to speak their visions and to the extent that they can have other things in the charter that talk to what they would like to have the city look like and feels this is very appropriate for the Charter. She went on to say she's not sure what is going to happen at the Council and stated she's a resident of Kahaluu and has been clearing invasive species at the end of her residential property. She commented she generates a lot of green waste and the city's change in the green waste policy as the first step to what they are calling comprehensive curbside recycling

is really junk and worst than it was before. Ms. Ziegler commented they have to use the blue bins, which they filled with recyclable newspaper and bottles thinking they were going to use that for recyclables and she usually generates 6-8 garbage cans twice a month. She noted she doesn't know how the city process works, if they passed the law it's not being implemented and thinks it's important that the citizens be allowed to voice their visions and maybe that would move things along. She stated she does not support the current administration's curbside recycling and feels it's worse now with the restriction.

William Reese Liggett testified in support. He read his written statement into the record.

ACTION:

Commissioner Lendio moved to approve Proposal 71. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Grau stated he is in support of this proposal. If this proposal does not get into the charter their children would be paying for the non-action of the existing community and he doesn't feel they should leave this to their children and grandchildren. He went on to say they should take care of their own problems and the trash they produce they ought to take responsibility for dealing with.

Commissioner Mikulina knows that since the proposal has been introduced there has been an ordinance passed at the city level and thinks this still belongs in the charter. He stated based on research from Researcher Nikki Love, two other islands have put this in their charter. He went on to say they specify solid waste collection disposal and this would simply upgrade it to add the responsibility to comprehensive curbside recycling. He noted 10,000 cities across the mainland have this program or amenity as he sees it and Oahu doesn't. Commissioner Mikulina stated in 2004 the City Council passed a curbside recycling proviso in the budget, the current administration took over and cancelled that program despite the fact they had bids offering to pay the city for giving them the recyclable goods. He went on to say it required the City Council to go through the process again despite the fact the administration was fighting it got a weakened bill, which doesn't go into effect until 2008. He urged the other Commissioner support for the proposal.

Commissioner Coffee seconded both Commissioner Grau and Commissioner Mikulina's testimony. He stated his pet peeve is the green waste is a smoke screen of what was supposed to take place with the blue bins. He went on to say they used to get their green waste picked up twice a month in black garbage bags anyway and that worked fine and feels it's a smoke screen to take their mind off the fact that the city needs comprehensive recycling. He stated he would be voting in favor of the proposal.

Commissioner Coffee asked Mr. Takamura to return to ask why the 2008 implementation because whatever the legislation establishes there is usually a reason behind it. Mr. Takamura responded they believe that converting the trash into energy is a form of recycling and the general trash is picked up at the curbside. He went on to say a lot of cities if they have incinerators they do not convert that heat to electricity. Mr. Takamura stated a lot of cities on the mainland that have curbside recycling charge a fee

but Honolulu does not charge a fee and that's the balance they are trying to play here. He went on to say if they implement additional programs it might be at the expense of the current program and commented instead of picking up trash twice a week, they may have to cut it down to once a week and still not charge a fee. Mr. Takamura stated they are looking at expanding by putting in another type of technology if they can get a successful RFP submittal to convert more of the trash to electricity. He stated reducing the dependency of imported oil they feel is a form of recycling the general trash. Mr. Takamura stated the Mililani curbside-recycling program collected two things, mixed recyclables in the blue bins and also picked up green waste. He stated the study tried to look at how much waste can be recovered from both types of systems and the cost impact. What it saw was that if they picked up mixed recyclables island wide they would reduce the amount of tonnage going to the land fields by 27,000 tons per year before the HI-5 program went into effect. He goes on to say after the HI-5 program went into effect the initial results from the HI-5 program were disappointing but as in any program it takes the Community time to get accustomed to doing things especially for a new program and results have gotten better. Mr. Takamura stated they think it's a very successful program and have factored that into the 27,000 tons per year and with the results from the Mililani project they would see the volume reduced to 20,000 per year. He went on to say regarding green waste, the recommendation from the Mililani pilot program was that if they would expand the curbside recycling they should try to focus on green waste. He stated they were composing 32,000 tons per year and there's a total of 200,000 tons per year of green waste generated and stated if they can get to tonnage up to 100,000 tons per year they would have 80,000 tons less per year going to Waimanalo landfill versus mixed recyclables being only 20,000 tons per year. Mr. Takamura stated for the initial bang for their buck where they don't charge the homeowners for user fees, they felt they would expand green waste first. He went on to say they are testing the success of the program getting residential participation up in the Mililani to Waimanalo area and that's why they are taking a year to evaluate that program and how they can maximize before they add the other two-thirds of the island. Commissioner Chang commented the time deadlines would allow the department to do the proper phasing in because those dates specified in the ordinance is no longer permissive, it's shall and he feels the reason for those dates are for them in an orderly way to implement it in a timely fashion. Mr. Takamura stated they bought the blue bins and were going to buy more but when they looked at the program results, the recommendation was to expand green waste. He stated the other recommendation was in order to do mixed recyclables, they have to educate the public more than green waste. He went on to say everyone is accustomed to twice a month pick up and they think it's going to be cheaper when automation begins granted there's a few homeowners that generate more than one blue bin of green waste. Through the Mililani Program they only generated 46lbs per pick up at a 35% set out rate and not everyone participated. He commented they need to do a lot of public education needs to go on to majority of a public and in instances where residents do generate a lot, they need to figure out a program to assist those homeowners. Commissioner Chang stated he was just concerned because of the comments that were being made which made it seem far off would indicate that the city was not committed to the program. Commissioner Chang went on to say from Mr. Takamura's testimony it sounds like the city is committed and is required by law. Mr. Takamura responded plastic, newspapers and mixed recyclables are burnable and if they are burnable they are able to produce electricity and is what they are focused on when they are doing the solid waste integrated master plan, they want to see what is

more cost efficient, sending the newspapers to the mainland to be recycled or to burn it in Honolulu in the incinerator to produce electricity to reduce their liability on imported oil.

Commissioner Coffee asked Mr. Takamura if green waste is burnable to produce power? Mr. Takamura responded yes but right now they are able to compost it here in Hawaii and has some agriculture benefit and it has more moisture than newspaper and plastics so it's better to get it out of the waste stream and compost it and reusing as an agricultural amenity.

Chair Takaki asked Corporation Counsel if curbside were required that would remove the ability to use H-Power? Deputy Corporation Counsel Sunakoda referred the question to ENV Director Eric Takamura. Chair Takaki asked Mr. Takamura the same question and added anything collected under the auspices of curbside recycling could not be used to be burned for energy even if that was the best alternative? Mr. Takamura responded it would take it away from H-Power or from waste to energy facility.

Commissioner Tom commented he suggests that the Commissioners not debate the ordinance that was passed. He went on to say he sees this as it is providing enabling legislation and if this is approved the Council would have to pass other ordinances to implement it or adopt it and doesn't think it's beneficial to discuss or debate the merits or demerits that was already passed by Council.

Commissioner Mikulina added from the recent discussion from the Director on why the ordinance, why the city isn't interested in doing curbside recycling, why they should do green waste and why they should burn it instead. He feels for these reasons this proposal is needed in the Charter.

Commissioner Grau this would be added to the Powers Duties and Functions that already exists in the Charter. He went on to say he thinks if the ordinance is already in place this would provide the same type of guidance in the charter as the other elements do and will be voting in favor of this proposal.

AYES: TAKAKI, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO, MEDER,
MIKULINA, SULLIVAN, TOM - 10
NOES: CHANG, MYERS, PACOPAC - 3

MOTION PASSED.

**** [PROPOSAL 96](#) - Environmental Bill of Rights; Add new section with an "environmental bill of rights" for current and future residents.**

The following individuals testified:

1. William Reese Liggett
2. A. Joseph Fadrowsky, III

Written testimony:

1. Alan T. Murakami, Litigation Director, Native Hawaiian Legal Corporation
2. William Reese Liggett

3. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
4. Jeff Glover
5. Nara Takakawa
6. Richard Mirikitani, Senior Vice President and Corporate Counsel, Castle & Cooke Hawaii
7. Tosh Hosoda, Senior Vice President – Planning, The Gentry Companies
8. A. Joseph Fadrowsky, III
9. Don White, President, EarthTrust
10. Sue White, President, Greenpeace Foundation
11. Chris Colgrove
12. Eric Takamura, Director, Department of Environmental Services

William Reese Liggett testified in support. He read his written testimony into the record.

A. Joseph Fadrowsky, III testified in opposition. He stated the open-ended language would hamstring the city both legislatively and administratively and would open the door to frequent lengthy and costly litigation. He went on to say in the development and housing business it would drive up the cost of housing and reduce the availability of new units which are currently in short supply. Mr. Fadrowsky stated the Hawaii State Constitution is one of the most protective in the nation and addresses Native Hawaiian Rights. He went on to say many other aspects are or should be covered in the City's general plan and feels this amendment is unnecessary and potentially a great impediment of the orderly operation of the city and can have many adverse economic impacts. Commissioner Mikulina asked Mr. Fadrowsky if he was familiar with the State Constitution's requirement for protection of natural resources. Mr. Fadrowsky responded he vaguely knows. Commissioner Mikulina read State Constitution Article XI Section 1; "For the benefit of present or future generations, State and political subdivisions shall serve and protect Hawaii's natural beauty and all Natural Resources including land, water, mineral and energy sources, and shall promote the development and utilization of these resources." Commissioner Mikulina asked Mr. Fadrowsky if this had led to any litigation or has stop any housing projects because of that language in the Constitution. Mr. Fadrowsky responded the language in the current proposal doesn't say it "will consider", it says "require protection" and doesn't think it's exactly the same. He went on to say he doesn't think they can anticipate how this specific language would be interpreted but does know a deferred tactic is the delaying legal tactic of those want to accomplish delays in the entitlement process and approvals. Commissioner Mikulina asked Mr. Fadrowsky in the State Constitution says it says shall serve and protect, has that led to any litigation? Mr. Fadrowsky responded if it's in the State Constitution, why is it needed in the Charter? Commissioner Mikulina asked Mr. Fadrowsky if he knows of any litigation that has arisen from that language in the State Constitution. Mr. Fadrowsky responded he is not personally aware.

Carl Ching testified they support the concept of Proposal 96 and stated they think it's important to protect Native Hawaiian Rights and natural resources for the future. He stated there is one sentence that is too restrictive, "the city shall", means they have to do it without any or regard. If they insert "shall consider", that would make it better for them. Mr. Ching stated that's the issue for them although they support the concept. Commissioner Mikulina asked Mr. Ching if he has found the State's language as too restricting because it says "shall preserve and protect"? Mr. Ching responded although

he has not come across any particular development they have had that has been a problem but he can foresee something in the future that it would be easy for a group to say "you shall protect this, so therefore stop your program." He went on to say without any details to that, how they implement the protection of these things is the details they need to see. He asked to give them an option to come to a mutual agreement to protect it.

Commissioner Chang asked Corporation Counsel for comments on what Mr. Ching has testified on. Deputy Corporation Counsel Sunakoda responded with respect to the language they concur that notwithstanding the underlying intent the proposal, as drafted they feel the language is problematic from a legal standpoint. She went on to say with respect to the mandatory language, "the city shall protect Native Hawaiian Rights and Natural Resource", she thinks the concern is even the concept of Native Hawaiian Rights is continuing to be litigated today in cases the city has in court right now. Deputy Corporation Counsel Sunakoda stated she thinks the concern is the vagueness and how this is going to be interpreted as drafted.

Chair Takaki asked Corporation Counsel if that similar sentence is also stated in a Revised Ordinance? Deputy Corporation Counsel Sunakoda responded she believes with respect to the consideration that the City or DPP would consider similarly worded issues or concerns, she believes it's articulated in the Sustainable Community Plan or Development Plan or the General Plan. Mr. Eng responded it is in the General Plan. Deputy Corporation Counsel Sunakoda clarified that is in the ordinances.

Marjorie Ziegler testified in support of Proposal 96. She read her written testimony into the record. Ms. Ziegler stated this proposal mirrors or reinforces what is already in the State Constitution Article IX, Section 1. She went on to say part of the proposal reinforces that they are already required as far as her concern could do that. Although one could argue that it is redundant, but the Charter is the voice and vision of the people.

ACTION:

Commissioner Lendio moved to approved Proposal 96. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Mikulina stated he feels this amendment is a strong statement of their guiding principles that belongs in the Charter. He stated he would be supporting this proposal and asked for the Commissioners' support also.

Commissioner Pacopac commented he would be voting against this proposal after hearing Corporation Counsel advising the Commission that the city may run into legal problems with this proposal.

Commissioner Grau asked Corporation Counsel the reading he heard from the State Constitution already requires the subdivision to serve and protect. Deputy Corporation Counsel Sunakoda responded she thinks it makes reference to the mandate as set forth as Commissioner Mikulina read but the concern she has as she looks at the Articles in the State of Hawaii Constitution that Commissioner Mikulina refers to Article XI Section

1, Article XI Section 7 – Relating to Water Resource, Article XII Section 7 – Relating to Traditional Customary Rights. She went on to say when they look at the language that does not track exactly with the language that's proposed. The language that is provided for cited from the State Constitution is considerably more detailed and longer than what is set forth in the proposed charter amendment and their concern is the vagueness issue and perhaps they would have less of a problem if it is the Commissioners' wish to consider the proposal and mirror the language as set forth in the State Constitution arguably it would be redundant to have it in the charter as well but it may address some of the concerns they have with the broadness and vagueness issue of the proposed language as drafted.

Commissioner Sullivan commented she doesn't think the reason to not vote for the proposal is because of a legal challenge. She stated she is looking at Section 2-102, which has been in the charter and is extremely vague and says, "all city powers shall be used to serve and it talks about health, happiness, safety aspiration" and feels it's really vague and doesn't see a practical side and understand all the potential ramifications. She went on to say she's looking at the Proposal as a broad policy statement and either they agree or they don't.

Commissioner Chang clarified Commissioner Sullivan's reference to Section 2-102 in the Charter and although she read the shall provision, it further goes on to say "it shall be used to serve and advance general welfare." He stated he reads that Section to be quite different to the proposal in terms of the legal exposure the city may have under the proposed charter amendment. He commented "shall be used to serve and advance", he thinks is not as specific as the one as being proposed but doesn't understand her point.

Commissioner Sullivan stated her point was part of the terms were too vague and there are provisions in the charter that are vague.

Deputy Corporation Counsel Sunakoda clarified with respect to Article XII Section 7 their concern is that particular provisions in the State Constitution specifically states or describes what rights the State and it's governmental subdivisions are suppose to protect. She stated if the proposed amendment were merely amounting to a reiteration of what is set forth in the State Constitution she thinks they would have a less of a concern.

AYES: GRAU, LENDIO, MEDER, MIKULINA, MYERS, SULLIVAN - 6
NOES: TAKAKI, CHANG, COFFEE, HIRANO, KAWASHIMA, PACOPAC, TOM -
7

MOTION FAILED.

PROPOSAL 98 - City Buildings and Department of Design and Construction; Require City Council to adopt green building standards for city buildings, revise Department of Design and Construction duties to comply with green building standards.

The following individuals testified:

1. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii

2. Eugene Lee, Deputy Director, Department of Design and Construction

Written testimony:

1. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
2. Paul Schwind
3. Donovan Dela Cruz, Council Chair, Honolulu City Council
4. Eugene Lee, Deputy Director, Department of Design and Construction

Marjorie Ziegler testified in support. She highlighted her written testimony into the record.

Eugene Lee testified in opposition. He stated he is speaking on behalf of the department and although they don't disagree with the green building standards they do believe it is inappropriate to be placed in the City Charter. He went on to say from research of other cities that have adopted green building standards did so with formal guidelines, policies or resolutions. Mr. Lee stated the City Council has adopted Bill 77 (2005), CD1 that requires the city to design buildings starting in FY 2008 to comply with LEED Silver certification, which is a green building standard program. He reiterated that the recommendation that it not move forward and is inappropriate and unnecessary.

ACTION:

Commissioner Lendio moved to approve Proposal 98. Commissioner Pacopac seconded that motion. Discussion followed.

Commissioner Meder clarified that the City Council has recently passed the LEED Silver standard and although he thinks this would be good to have as a principle of statement in the charter, he doesn't think it's necessary.

AYES: MIKULINA - 1
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MYERS, PACOPAC, SULLIVAN, TOM - 12

MOTION FAILED.

DRAFT 6/5/06

**** PROPOSAL 99** - Development Plans and Zoning; Require that when an acre of land is converted from preservation designations, an acre of land will be converted to those designations, ensuring no net loss of preservation lands.

The following individuals testified:

1. Dean Uchida, Executive Director, LURF
2. Mike Kido, External Affairs, The Pacific Resource Partnership
3. William Reese Liggett
4. Tai Hong
5. Carlton Ching, Castle & Cooke Hawaii
6. A. Joseph Fadrowsky, III
7. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
8. Henry Eng, Director, Department of Planning and Permitting

9. Jim Tollefson, President, Chamber of Commerce of Hawaii
10. Lance Tanaka, Vice President and Manager of Government Affairs, Bank of Hawaii

Written testimony:

1. Dean Uchida, Executive Director, LURF
2. Alan Shintani, President, BIA-Hawaii
3. Albert Kanno
4. Jim Tollefson, President, Chamber of Commerce of Hawaii
5. Kyle Chock, Executive Director, The Pacific Resource Partnership
6. Miles T. Nishijima, Assistant Vice President/Asset Management, Kaneohe Ranch Management
7. William Reese Liggett
8. Marjorie Ziegler, Executive Director, Conservation Council for Hawaii
9. Jeff Glover
10. Mark & Karen Kimbrell
11. Richard Poirier, Chair, Mililani/Waipio/Melemau Neighborhood Board
12. William "Buzz" Hong, Executive Director, Hawaii Building and Construction Trades Council
13. R. Eric Beaver, President and CEO, Hawaii Reserves, Inc.
14. Steve Hoag, Director of Human Resources and Government Affairs, Hawaii Reserves, Inc.
15. Paul Schwind
16. Carl Takamura, Hawaii Business Roundtable
17. Richard Mirikitani, Senior Vice President and Corporate Counsel, Castle & Cooke Hawaii
18. Tosh Hosoda, Senior Vice President – Planning, The Gentry Companies
19. A. Joseph Fadrowsky, III
20. Von D. Orgill, President and CEO, Polynesian Cultural Center
21. Hawaii Carpenters Union
22. Francine Margulies
23. Don White, President, EarthTrust
24. Sue White, President, Greenpeace Foundation
25. Lance Tanaka, Vice President and Manager of Government Affairs, Bank of Hawaii
26. Henry Eng, Director, Department of Planning and Permitting

Dean Uchida testified in opposition. He summarized his written testimony. He stated what is missing from the data he provided is within the urban area the city's zones, parks and cemetery preservation becomes problematic if for example there is a road widening project and they take portions of a park or cemetery how do they do the replacements and states it seems illogical to make the one for one replacement with preservation lands.

Mike Kido testified although they support the intent of the amendment to protect preservation lands, they oppose the amendment as proposed and urge the Commissioners to not move it forward.

William Reese Liggett testified he stands on his written testimony.

Tai Hong testified in support.

Carlton Ching testified they stand on their written testimony.

A. Joseph Fadrowsky, III testified in opposition. He stated it appears to be unworkable for the City to do land use planning, for applicants who are unlikely to give replacement lands and if they were to acquire replacement lands the cost of those lands would be prohibitive and would add to the high cost of housing. He went on to say it's very likely to run afoul to the State's Land Use laws and regulations that are already in existence. Mr. Fadrowsky stated he is concerned that this would lead too much higher housing cost and other negative economic and social impact. He went on to say extreme policies such as this do not belong in the charter.

Marjorie Ziegler testified in support. She stated preservation land provides habitat for rare and endangered species. She went on to say Hawaii has over 300 threatened and endangered plants on the Federal list and therefore on the State list which is about 1/3 of the list nationwide and even though we have less than 2/10ths of a percent of land area in the Country we have 1/3 of the endangered species.

Henry Eng testified in opposition. He stated the proposal assumes incorrectly that the present ratio of preservation to urban needs to be maintained. The no net loss concept is unworkable and unwise. He went on to say it would stifle planning initiatives and relegate planning to a status quo, static ratio of districts. Mr. Eng stated they believe planners need that flexibility to adjust the balance as needs change. Commissioner Mikulina asked Mr. Eng if he knew how many preservation acres have been rezoned within the past 10, 20 or 30 years. Mr. Eng responded he's only been with the department for a year and a half and doesn't know. Commissioner Mikulina then asked Mr. Eng if there was any historical perspective? Mr. Eng responded he's not aware.

Jim Tollefson testified in opposition. He stated he stands on his written statement.

Lance Tanaka of Bank of Hawaii testified they stand on their written testimony in opposition.

ACTION

Commissioner Lendio moved to approve Proposal 99. Commissioner Grau seconded that motion. Discussion followed.

Commissioner Sullivan commented she thinks the proposal has good intentions but was not well thought through and cannot support this proposal. She stated one thing to consider is State conservation designation is not the same as County preservation zoning and there's a tendency to think it is but the County has different things in their zoning preservation from military land to cemeteries and there are some real practical problems such as Manama, Barber's Point and how do they take those reused areas out of preservation that are large tracts of land. She commented from a practical standpoint it's not a workable concept from the way it is drafted.

Commissioner Mikulina stated he would be supporting this and agrees it would be fairly difficult to implement but would require that certain landowners work with other landowners and work out agreements and thinks this is doable.

Commissioner Coffee thanked the testifiers who stayed throughout the entire meeting along with the Commissioners.

AYES: MIKULINA - 1
NOES: TAKAKI, CHANG, COFFEE, GRAU, HIRANO, KAWASHIMA, LENDIO,
MEDER, MYERS, PACOPAC, SULLIVAN, TOM – 12

MOTION FAILED.

FURTHER DISCUSSION AND ACTION: Combination of “housekeeping” amendments for purposes of the ballot: Proposals 35, 75, 76, 78, S-6, S-10, and other proposals.

No testimony received.

Chair Takaki referred this matter to be discussed by the Style Committee to discuss which should be housekeeping amendments.

4. Committee Reports

- a. Report of the Budget Committee – No Report.
- b. Report of the Submission and Information Committee – No Report.
- c. Report of the Personnel Committee – No Report.
- d. Report of the Rules Committee – No Report.
- e. Style Committee – Chair Takaki announced the Style Committee will determine the order of proposals, wording of the proposal and the housekeeping combination however they so choose. The meetings will be sunshined and the Committee will report back to the full Commission. Chair Takaki stated there are 7 volunteers, Commissioner Mikulina, Commissioner Pacopac, Commissioner Lendio, Commissioner Kawashima, Commissioner Coffee, Commissioner Tom, Chair Takaki and will appoint Commissioner Kawashima as chair of that Committee.

5. Officers Reports

- A. Chair – Chair had no report.
- B. Vice Chair – Commissioner Mikulina had no report.
- C. Treasurer - Commissioner Myers had no report.

D. Secretary – Commissioner Pacopac had no report.

6. **Announcements**

No announcements.

7. **Next Meeting Schedule**

The next meeting will be June 6, 2006.

8. **Adjournment**

Meeting was adjourned at 10:35 p.m.

DRAFT 6/5/06